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Nos. 06-1666 and 07-394

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In the Supreme Court of the United States

MOHAMMAD MUNAF, ET AL., PETITIONERS

v.

PETE GEREN, SECRETARY OF THE ARMY, ET AL.

PETE GEREN, SECRETARY OF THE ARMY, ET AL., PETITIONERS

v.

SANDRA K. OMAR AND AHMED S. OMAR, AS NEXT OF FRIENDS OF SHAWQI AHMAD OMAR

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

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PETITIONS FOR A WRIT OF CERTIORARI FILED:
JUNE 13, 2007, AND SEPTEMBER 21, 2007
CERTIORARI GRANTED: DEC. 7, 2007

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 06-5324

MUNAF, MOHAMMAD, ET AL., APPELLANTS

v.

HARVEY, FRANCIS, ET AL., APPELLEES

DOCKET ENTRIES

DATE	PROCEEDINGS
10/20/06	CIVIL-US CASE docketed. Notice of Appeal filed by Appellant Mohammad Muhaf, Appellant Maisoon Mohammed. [999099-1] (mam) [06-5324]
10/20/06	MOTION filed (5 copies) by Appellants Mohammad Muhaf and Maisoon Mohammed (certificate of service by mail dated 10/20/06) for injunction pending appeal [999233-1], containing a request to have the panel who heard oral argument in case No. 06-5126 hear this case. Response due on 11/6/06. (mam) [06-5324]
10/23/06	SUPPLEMENT (signed original of motion) to [999451-1] motion injunction [999233-1] filed by Appellant Mohammad Muhaf. (mam) [06-5324]

DATE	PROCEEDINGS
10/23/06	PER CURIAM ORDER filed [999547] denying request to assn appeal to panel who heard oral argument in 06-5126 (Judge Tatel, Judge Brown and Judge Edwards) and referring consideration of motion injunction [999233-1] to a special panel. [Entry Date: 10/23/06] [06-5126, 06-5324] (mam) [06-5126 06-5324]
10/23/06	PER CURIAM ORDER filed [999558] directing parties to file the following regarding the motion injunction [999233-1]: appellees' response, due on 10/25/06, by 12:00 noon; appellant's reply due on 10/26/06 by 12:00 noon. Papers to be hand-filed and hand-delivered. [Entry Date: 10/23/06] (mam) [06-5324]
10/25/06	OPPOSITION filed [1000891-1] (5 copies) by Appellees Francis J. Harvey et al. (certificate of service by hand and mail dated 10/25/06) to a motion injunction [999233-1]. (mam) [06-5324]
10/26/06	REPLY filed [1000893-1] (5 copies) by Appellant Mohammad Munaf (certificate of service by mail dated 10/26/06) to a response to the motion injunction [999233-1]. (mam) [06-5324]

DATE	PROCEEDINGS
10/27/06	PER CURIAM ORDER filed [1001091] denying motion for injunctive relief [999233-1] filed by Mohammad Munaf, Maisoon Mohammed; Appellants have not satisifed the stringent standards required for an injunction pending appeal; FURTHER ORDERED, on the court's own motion, enjoining appellees from transferring appellant Mohammad Munaf to Iraqi custody before 4:30 p.m., EST, on 11/6/06, or until such time as the Supreme Court acts upon an application for stay or for other relief, whichever occurs last; The purpose of this decretal paragraph is to give appellants an opportunity to seek relief from the Supreme Court; If no relief is sought by 4:30 p.m. EST, on 11/6/06, then this injunction will be lifted; Counsel for appellants is directed to notify the Clerk of the court if an application is filed in the Supreme Court and the disposition of an such application. Before Judges Sentelle, Henderson, Tatel*. (*Circuit Judge Tatel would grant the motion for injunctive relief for the reasons set for in an attached dissenting statement) (Entry Date: 10/27/06] (cwc) [06-5324]

DATE	PROCEEDINGS
10/30/06	FIRST CLASS MAIL [1008440-1] sent to Mr. Hafetz RETURNED marked return to sender. Mail was two orders filed 10/23/06. (mam) [06-5324]
11/06/06	CLERK'S ORDER filed [1002718] directing Appellant to file [1002718-1]: docketing statement due 12/6/06 for Mohammad Munaf; certificate of counsel due 12/6/06 for Mohammad Munaf; statement of issues due 12/6/06 for Mohammad Munaf; lower court decision due 12/6/06 for Mohammad Munaf; any procedural motions due 12/6/06 for Mohammad Munaf; transcript status notice due 12/6/06 for Mohammad Munaf; deferred appendix notice due 12/6/06 for Mohammad Munaf; appearance form due 12/6/06 for Jonathan Lewis Hafetz, for Susan L. Burke; any dispositive motions due 12/21/06 for Mohammad Munaf;, directing Appellee to file [1002718-2]: certificate of counsel due 12/6/06 for Francis J. Harvey; any procedural motions due 12/6/06 for Francis J. Harvey; appearance form due 12/6/06 for Douglas N. Letter; any dispositive motions due 12/21/06 for Francis J. Harvey;. [Entry Date: 11/6/06] (smc) [06-5324]

DATE	PROCEEDINGS
11/6/06	MOTION filed (5 copies) by Appellant Mohammad Munaf, Appellant Maisoon Mohammed (certificate of service dated 11/6/06) for en banc reconsideration [1002929-1] of the court's order denying the injunctive relief. (mcm) [06-5324]
11/7/06	CLERK'S ORDER filed [1003132] that appellees filed by noon on November 13, 2006, a response to the petition, nte 15 pages. Absent further order of the court, the court will not accept a reply to the response. [1002929-1] [Entry Date: 11/7/06] (lej) [06-5324]
11/10//06	PER CURIAM ORDER filed [1003792], on the court's own motion, that the injunction entered October 27, 2006, be extended until such time as the court disposes of the petition for reconsideration en banc. Before Judges Sentelle, Henderson, Tatel. [Entry Date: 11/12/06] (mcm) [06-5324]
11/13/06	OPPOSITION filed [1004961-1] (5 copies) by Appellee Francis J. Harvey, Appellee William H. Brandenburg, Appellee Steele (certificate of service dated 11/13/06) to a motion reconsideration [1002929-1]. (mcm) [06-5324]

DATE	PROCEEDINGS
11/13/06	NOTICE filed by the Supreme Court advising that an application for temporary injunctive relief was presented to the Chief Justice and was denied. [1008888-1] (lej) [06-5324]
11/14/06	LETTER sent on 11/13/06 by Attorney for Appellant Mohammad Munaf with courtesy copy of Petitioner-Appellants Reply Memorandum in Support of Application for Temporary Injunctive Relief filed with the US Supreme Court on 11/10/06. [1004653-1] (hts) [06-5324]
11/16/06	MOTION filed (5 copies) by Appellant Mohammad Munaf, Appellant Maisoon Mohammed (certificate of mail service dated 11/16/06) to expedite case [1006131-1] Response due on 12/4/06. (lej) [06-5324]
12/1/06	PER CURIAM ORDER filed [1008124] granting motion expedite case and establishing briefing schedule [1008124-1] and format: Appellant's brief, 14,000 wds, due on 12/8/06; appendix due on 12/8/06; Appellee's brief, 14,000 wds, due on 12/22/06; Appellant's reply brief, 7,000 wds, due on 1/5/07. Parties directed to hand-file and hand-serve submissions; Clerk directed to calendar

DATE	PROCEEDINGS
	case for oral argument on the first available date following completion of briefing. Before Judges Randolph, Garland, Brown. [Entry Date: 12/1/06] (mam) [06-5324]
12/5/06	FIRST CLASS MAIL [1008909-1] RESENT. Reason mail resent: address for Mr. Hafetz is correct. Mail was 10/23/06 orders (mam) [06-5324]
12/6/06	ENTRY OF APPEARANCE filed by Attorneys Lewis Yelin and Douglas N. Letter for Appellees Steele, William H. Brandenburg, and Francis J. Harvey [1011204-1]. (krm) [06-5324]
12/6/06	INITIAL SUBMISSIONS filed by Appellant Mohammad Munaf, Appellant Maisoon Mohammed [1012307-1]. Docketing Statement. (lvs) [06-5324]
12/6/06	ENTRY OF APPEARANCE filed by Attorney Joe Margulies for Appellant Maisoon Mohammed, Appellant Mohammad Munaf, Jonathan Lewis Hafetz for Appellant Maisoon Mohammed, Appellant Mohammad Munaf, Susan L. Burke for Appellant Maisoon Mohammed, Appellant Mohammad Munaf [1014576-1]. (smc) [06-5324]

DATE	PROCEEDINGS
12/6/06	NOTICE filed by Appellant Mohammad Munaf INTERIM transcript status notice filed [1014577-1]. Certificate of service date 12/6/06. (smc) [06-5324]
12/6/06	INITIAL SUBMISSIONS filed by Appellant Mohammad Munaf [1014578-1]: statement of issues, deferred appendix notice, lower court decision. (smc) [06-5324]
12/8/06	BRIEF filed by Appellant Mohammad Munaf [1010204-1]. Copies: 15. Certificate of service date 12/8/06. (smc) [06-5324]
12/8/06	APPENDIX filed by Appellant Mohammad Munaf [1010215-1]. Copies: 10. Certificate of service date 12/8/06. (smc) [06-5324]
12/12/06	ERRATA SHEET to brief [1010204-1] filed by Appellant Mohammad Munaf. (smc) [06-5324]
12/12/06	FIRST CLASS MAIL (sent to Mr. Hafetz, Esq.) [1011954-1] RETURNED marked not delivered as addressed unable to forward. Mail was in response to two orders filed on 10/23/06. (krm) [06-5324]

DATE	PROCEEDINGS
12/14/06	INITIAL SUBMISSIONS filed by Appellees Francis J. Harvey, William H. Brandenburg, and Steele [1011208-1]: certificate of counsel. (krm) [06-5324]
12/15/06	PER CURIAM ORDER, In Banc, filed [1011269] granting motion reconsideration. Appellees are hereby enjoined from transferring Appellant Mohammad Mnuaf [*sic*] to Iraqi custody pending resolution of this appeal. [1002929-1]. Before Judges Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel, Garland, Brown, Griffith,. [Entry Date: 12/15/06] (lej) [06-5324]
12/22/06	BRIEF filed by Appellee Francis J. Harvey, Appellee William H. Brandenburg, Appellee Steele [1014029-1]. Copies: 15. Certificate of service date 12/22/06. (lmf) [06-5324]
1/5/07	REPLY BRIEF filed by Appellants Mohammad Munaf and Maisoon Mohammed [1015081-1]. Copies: 15. Certificate of mail and electronic mail service date 1/5/07. (krm) [06-5324]
1/12/07	CLERK'S ORDER filed [1016155] to schedule oral argument [1016155-1] before Judge Initials: DBS ARR BMK on 2/16/07 at 9:30 AM. [Entry Date: 1/12/07] (cwc) [06-5324]

DATE	PROCEEDINGS
1/17/07	FORM 72 filed by Attorney Joe Margulies on behalf of appellants Mohammad Munuf [*sic*] [1022905-1] [1022905-2]. (set) [06-5324]
1/23/07	NOTICE filed by Appellant Mohammad Munaf FINAL transcript status notice filed [1019589-1]. Transcripts completed . . Certificate of service date 1/23/07. (smc) [06-5324]
1/29/07	LETTER filed by Appellee Francis J. Harvey, Appellee William H. Brandenburg, Appellee Steele pursuant to FRAP 28j advising of additional authorities [1019783-1]. Certificate of service date 1/29/07. (lej) [06-5324]
2/7/07	PER CURIAM ORDER filed [1021584] to allocate oral argument times: APET minutes- 20 ERES minutes- 20. [1021584-1], Form 72 notice of attorney arguing case - [1021584-2] due 2/13/07. [Entry Date: 2/7/07] (cwc) [06-5324]
2/8/06	FORM 72 filed by Attorney Gregory George Garre on behalf of appellees Francis J. Harvey, et al. [1022907-1] [1022907-2]. (set) [06-5324]

DATE	PROCEEDINGS
2/13/07	LETTER filed by Appellees pursuant to FRAP 28j advising of additional authorities [1022867-1]. Certificate of service date 2/12/07. (lej) [06-5324]
2/14/07	LETTER filed by Appellant Mohammad Munaf, Appellant Maisoon Mohammed pursuant to FRAP 28j advising of additional authorities [1023055-1]. Certificate of service date 2/12/07. (cwc) [06-5324]
2/16/07	ORAL ARGUMENT HELD before Sentelle, Randolph, Kavanaugh. (set) [06-5324]
4/6/07	JUDGMENT for the reasons in the accompanying opinion affirming [1033348-1] the decision of the district court. Before Judges Sentelle, Randolph, Kavanaugh. [Entry Date: 4/6/07] (mam) [06-5324]
4/6/07	OPINION filed [1033349] (6 pgs) for the Court filed by Judge Sentelle, CONCURRING OPINION (3 pgs) filed by Judge Randolph (mam) [06-5324]

DATE	PROCEEDINGS
4/6/07	CLERK'S ORDER filed [1033350] directing Clerk to withhold issuance of the mandate [1033350-1] pending disposition of any timely petition for rehearing. . [Entry Date: 4/6/07] (mam) [06-5324]
4/12/07	FIRST CLASS MAIL [1035830-1] sent to Jonathan Hafetz, Esq. RETURNED marked moved, not forwarded. Mail was in response to a clerk order withholding mandate [1033350-1]. (krm) [06-5324]
4/27/07	MOTION filed (5 copies) by Appellant Mohammad Munaf (certificate of service by mail dated 4/27/07) to stay issuance of the mandate. (mam) [06-5324]
5/3/07	OPPOSITION filed [1039143-1] (5 copies) by Appellees Pete Geren, et al. (certificate of mail service dated 5/3/07) to Appellants' motion stay mandate pending disposition of petition for writ of certiorari [1037344-1]. (smc) [06-5324]
5/9/07	PER CURIAM ORDER filed [1039571] granting motion stay the mandate filed by Mohammad Munaf [1037344-1]. Before Judges Sentelle, Randolph, Kavanaugh. [Entry Date: 5/9/07] (mcm) [06-5324]

DATE	PROCEEDINGS
5/9/07	REPLY filed [1039706-1] (5 copies) by Appellants Mohammad Munaf and Maisoon Mohammed (certificate of mail service dated 5/8/07) to Appellees' Opposition to motion to stay the mandate pending disposition of a petition for writ of certiorari. (smc) [06-5324]
6/18/07	LETTER dated 6/15/07 received from the S. Ct. advising that the petition for a writ of certiorari was filed on 6/13/07 and docked on 6/15/07 as No. 06-1666 [1048880-1]. (krm) [06-5324]
6/18/07	LETTER filed by Counsel for Appellant Mohammad Munaf notifying this court that a petition for writ of certiorari has been filed at the United States Supreme Court [1049417-1]. (mcm) [06-5324]
12/10/07	LETTER sent by S. Ct. entering an order granting petition for writ of certiorari. [1086026-1] The case is consolidated with 07-394 and a total of one hour is allotted for oral argument. (hts) [06-5324]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 06-5324

MAISOON MOHAMMAD, NEXT FRIEND OF
MOHAMMAD MUNAF, PETITIONERS-APPELLANTS

v.

FRANCIS J. HARVEY, ET AL., RESPONDENTS-APPELLEES

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
08/18/2006	1	PETITION for Writ of Habeas Corpus (Filing fee $5.) filed by MOHAMMAD MUNAF and MAISOON MOHAMMED. (tg,) Modified on 8/24/2006 (lc,). (Entered: 08/21/2006
09/01/2006	2	MOTION for Leave to Appear Pro Hac Vice: Attorney Name-Jonathan Hafetz: Address- Brennan Center for Justice at NYU School of Law, 161 Avenue of the Americas,

DATE	DOCKET NUMBER	PROCEEDINGS
		12th Floor, New York, NY 10013. Phone No. - (212) 998-6730. Fax No. - (212) 995-4550 by MOHAMMAD MUNAF, MAISOON MOHAMMED. (Burke, Susan) (Entered: 09/01/2006)
09/01/2006	3	MOTION for Leave to Appear Pro Hac Vice: Attorney Name-Aziz Huq.: Address- Brennan Center for Justice at NYU School of Law, 161 Avenue of the Americas, 12th Floor, New York, NY 10013. Phone No. - (212) 992-8632. Fax No. - (212) 995-4550 by MOHAMMAD MUNAF, MAISOON MOHAMMED. (Burke, Susan) (Entered: 09/01/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
09/05/2006	4	ORDER granting 2 Motion to allow Jonathan Hafetz, Esquire admittance to the bar of this Court pro hac vice as counsel for Maisson Mohammed et al. in this case. Signed by Judge Royce C. Lamberth on 9/5/06. (lcrcl2,) (Entered: 09/05/2006)
09/05/2006	5	ORDER granting 3 Motion to allow Aziz Huq, Esquire admittance to the bar of this Court pro hac vice as counsel for Maisson Mohammed et al. in this case. Signed by Judge Royce C. Lamberth on 9/5/06. (lcrcl2,) (Entered: 09/05/2006)
09/08/2006	6	MOTION for Temporary Restraining Order *Preventing Petitioner Munaf's Transfer to Iraqi Authorities* by MOHAMMAD MUNAF, MAISOON MOHAMMED

DATE	DOCKET NUMBER	PROCEEDINGS
		(Attachments: # 1 Text of Proposed Order # 2 Text of Proposed Order) (Hafetz, Jonathan) # 3 Memorandum of Points and Authorities # 4 Exhibits. Additional attachment(s) added on 9/11/2006 (tg,). Modified on 9/11/2006 (tg,). (Entered: 09/08/2006)
09/08/2006	7	ENTERED IN ERROR .....MOTION for Temporary Restraining Order *Memorandum of Law in Support of Temporary Restraining Order* by MOHAMMAD MUNAF, MAISOON MOHAMMED. (Attachments: # 1 Exhibit Exhibits to Memorandum of Law in Support of Temproary [*sic*] Restraining Order) (Hafetz, Jonathan) Modified on 9/11/2006 (tg,). (Entered: 09/08/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
09/11/2006		NOTICE OF CORRECTED DOCKET ENTRY: re 7 MOTION for Temporary Restraining Order *Memorandum of Law in Support of Temporary Restraining Order* was entered in error as counsel used the wrong ECF event to docket attachment to a motion. The clerk properly attached the documents to the related motion. (tg,) (Entered: 09/11/2006)
09/12/2006	8	ORDER that the Respondents' opposition to the Motion for Temporary Restraining Order be filed on or before September 15, 2006, and that Petitioners' reply be filed on or before September 20, 2006. Signed by Judge Royce C. Lamberth on 9/12/2006. (lcrcl 1,) (Entered: 09/12/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
09/13/2006		Set/Reset Deadlines: Respondents' Responses due by 9/15/2006. Petitioners' Replies due by 9/20/2006. (rje) (Entered: 09/13/2006)
09/16/2006	9	Memorandum in opposition to re 6 MOTION for Temporary Restraining Order *Preventing Petitioner Munaf's Transfer to Iraqi Authorities* filed by FRANCIS J. HARVEY, WILLIAM H. BRANDENBURG, STEELE. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3# 4 Exhibit 4# 5 Exhibit 5) (White, Edward) (Entered: 09/16/2006)
09/20/2006	10	REPLY to opposition to motion re 6 MOTION for Temporary Restraining Order *Preventing Petitioner Munaf's Transfer to Iraqi Authorities* filed by MOHAMMAD

DATE	DOCKET NUMBER	PROCEEDINGS
		MUNAF, MAISOON MOHAMMED. (Attachments: # 1 Exhibit Declaration of Sean Riordan) (Hafetz, Jonathan) (Entered: 09/20/2006)
09/28/2006	11	ORDER Setting Hearing on Motion 6 MOTION for Temporary Restraining Order *Preventing Petitioner Munaf's Transfer to Iraqi Authorities:* Motion Hearing set for 10/2/2006 10:00 AM in Courtroom 22A before Judge Royce C. Lamberth. Signed by Judge Royce C. Lamberth on 9/28/2006. (lcrcl 1,) (Entered: 09/28/2006)
09/29/2006		Set/Reset Hearings: Motion Hearing set for 10/2/2006 at 10:00 AM in Courtroom 22A before Judge Royce C. Lamberth. (rje) (Entered: 09/29/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
09/29/2006		Set/Reset Hearings: Motion Hearing reset for 10/10/2006 at 09:30 AM in Courtroom 22A before Judge Royce C. Lamberth (rje) (Entered: 09/29/2006)
10/10/2006		Minute Entry for proceedings held before Judge Royce C. Lamberth: Motion Hearing held on 10/10/2006 re 6 MOTION for Temporary Restraining Order *Preventing Petitioner Munaf's Transfer to Iraqi Authorities* filed by MAISOON MOHAMMED,, MOHAMMAD MUNAF, heard and held in abeyance. (Court Reporter Theresa Sorensen.) (rje) (Entered: 10/10/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
10/13/2006	12	Supplemental MOTION for Temporary Restraining Order *Preventing Petitioner's Motion to Iraqi Authorities* by MOHAMMAD MUNAF, MAISOON MOHAMMED. (Attachments: # 1 Exhibit Supplemental Declaration of Sean Riordan # 2 Text of Proposed Order Proposed Order) (Hafetz, Jonathan) (Entered: 10/13/ 2006)
10/16/2006	13	RESPONSE to 12 *Petitioners' Emergency Supplement* filed by FRANCIS J. HARVEY, WILLIAM H. BRANDENBURG, STEELE. (Attachments: # 1 Exhibit 1) (White, Edward) Modified on 10/17/2006 (tg,). (Entered: 10/16/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
10/17/2006	14	ENTERED IN ERROR.....Supplemental MOTION for Temporary Restraining Order *Preventing Petitioner's Transfer to Iraqi Custody* by MOHAMMAD MUNAF, MAISOON MOHAMMED. (Attachments: # 1) (Hafetz, Jonathan) Modified on 10/18/2006 (tg,). (Entered: 10/17/2006)
10/17/2006	15	REPLY to Response to 12 Supplemental MOTION for Temporary Restraining Order *Preventing Petitioner's Motion to Iraqi Authorities* filed by MOHAMMAD MUNAF, MAISOON MOHAMMED. (Attachments: # 1 Exhibit A) (tg,) (Entered: 10/18/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
10/18/2007		NOTICE OF CORRECTED DOCKET ENTRY: re 14 Supplemental MOTION for Temporary Restraining Order *Preventing Petitioner's Transfer to Iraqi Custody* was entered in error as the filer used the wrong ECF event to docket a Reply. The clerk refiled the document under docket number 15. (tg,) (Entered: 10/18/2006)
10/19/2006	16	ORDER dismissing 1 Petition for Writ of Habeas Corpus for lack of subject matter jurisdiction, denying 6 Motion for TRO, denying 12 Motion for TRO. Signed by Judge Royce C. Lamberth on 10/19/2006. (lcrcl 1,) (Entered: 10/19/ 2006)

DATE	DOCKET NUMBER	PROCEEDINGS
10/19/2006	17	MEMORANDUM AND OPINION. Signed by Judge Royce C. Lamberth on 10/19/2006. (lcrcl 1,) (Entered: 10/19/ 2006)
10/19/2006	18	NOTICE OF APPEAL as to 17 Memorandum & Opinion, 16 Order on Motion for TRO, by MOHAMMAD MUNAF, MAISOON MOHAMMED. Filing fee $455, receipt number 1032671. Fee Status: Fee Paid. Parties have been notified. (Burke, Susan) (Entered: 10/19/2006)
10/19/2006		Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 18 Notice of Appeal (tg,) (Entered: 10/20/ 2006)

DATE	DOCKET NUMBER	PROCEEDINGS
10/24/2006		USCA Case Number 06-5324 for 18 Notice of Appeal filed by MAISOON MOHAMMED, MOHAMMAD MUNAF. (tg,) (Entered: 10/25/2006)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. [Omitted]

MAISOON MOHAMMED AS NEXT FRIEND OF
MOHAMMAD MUNAF, CAMP BUCCA, IRAQ;
PETITIONERS

v.

FRANCIS J. HARVEY,
SECRETARY OF THE U.S. ARMY
101 ARMY PENTAGON ROOM 3E-506
WASHINGTON, D.C. 20301-0101

MAJOR GENERAL
WILLIAM H. BRANDENBURG,
DEPUTY COMMANDING GENERAL
(DETAINEE OPERATIONS)/COMMANDING GENERAL,
TASK FORCE 134, MULTI-NATIONAL FORCE-IRAQ

COLONEL [FNU] STEELE,
COMMANDING OFFICER,
CAMP CROPPER, IRAQ; RESPONDENTS

PETITION FOR WRIT OF HABEAS CORPUS

---

1. Petitioner Mohammad Munaf seeks a writ of habeas corpus. Petitioner is an American citizen imprisoned by the U.S. military for more than one year at Camp Cropper Prison at Baghdad International Airport in Iraq. He has been detained almost *incommunicado*, without any access to U.S. counsel, without due process,

and under threat of transfer to Iraqi authorities. He continues to be severely restricted in his contacts with his family and the outside world.

2. On information and belief, Mr. Munaf traveled to Iraq at the behest of and with three journalists from Romania in March 2005 as a translator and guide. Soon after their arrival, unknown persons kidnapped Mr. Munaf and the three Romanian journalists, and held them captive for fifty-five days.

3. Upon his release from captivity, Mr. Munaf was imprisoned by the U.S. military at a prison compound located at the Baghdad International Airport ("BIAP"). Mr. Munaf has remained in U.S. custody at Camp Cropper Prison at BIAP since approximately June 2005. Mr. Munaf's detainee number is [REDACTED].

4. For the first five months of his detention, Mr. Munaf was not allowed contact with his family or a lawyer. Since approximately November 2005, he has been offered very limited contact with his family. He has had limited access to an Iraqi attorney. Despite his requests, he has been denied access to an American attorney.

5. The U.S. Constitution, the laws of the U.S., and the binding obligations of international law prohibit the U.S. government from arresting its citizens and detaining them without charge or lawful process, all without permitting them access to counsel. Mr. Munaf's prolonged detention, which has by now lasted more than one year, violates constitutional, statutory, and international laws, including:

a. The fundamental right to due process of law guaranteed by the Fifth Amendment to the U.S. Constitution;

b. The fundamental right to be free from governmental restraint absent a criminal proceeding or judicial process under the Suspension Clause of the U.S. Constitution;

c. The fundamental right to assistance of counsel guaranteed by the Fifth Amendment to the U.S. Constitution;

d. The right to be free from arbitrary and indefinite executive detention pursuant to the Citizen Non-Detention Act, 18 U.S.C. § 4001(a);

e. The right as a noncombatant to be free from arbitrary and indefinite detention as guaranteed by the International Covenant on Civil and Political Rights and understood by customary international law, including the customary international law of armed conflict; and

f. The right to be free from an unlawful transfer to a foreign sovereign to be tortured and denied due process, as guaranteed by the Fifth Amendment to the U.S. Constitution, the habeas statute, and Common Article 3 of the Geneva Conventions.

6. Accordingly, Petitioners respectfully seek relief from this Court, inter alia, in the form of a writ of habeas corpus. Petitioners specifically request that this Court issue such a writ compelling Respondents to (1) permit Mr. Munaf immediate access to his attorneys of choice who are listed below, and not solely Iraqi counsel;

(2) establish a lawful basis for Mr. Munaf's detention or release him from custody; and (3) enjoin Mr. Munaf's transfer to Iraqi authorities.

JURISDICTION AND VENUE

7. Petitioners invoke this Court's jurisdiction pursuant to 28 U.S.C. §§ 2241(a), (c)(1) & (c)(3); 2242, and 2243. In addition, this Court has jurisdiction under the U.S. Constitution, Article I, § 9, cl. 2, Article III, and the Due Process Clause of the Fifth Amendment because those provisions guarantee Mr. Munaf a judicial forum in which to contest the legal validity of his detention. Mr. Munaf further invokes this Court's jurisdiction under 28 U.S.C. §§ 1331, 1651 (All Writs Act), 2201 & 2202 (Declaratory Judgment Act).

8. Mr. Munaf is entitled to challenge his detention in federal court. A U.S. citizen detained in the custody of federal officials in violation of the Constitution, laws, or treaties of the U.S. unquestionably has the right to challenge that detention in federal court once personal jurisdiction over the petitioner's custodian is established.

9. Mr. Munaf is detained by U.S. officials at a detention facility known as Camp Cropper. The facility is under the control of the U.S. military and within the plenary and exclusive jurisdiction or dominion exercised in fact of the U.S..

10. This Court possesses personal jurisdiction over Respondents because they are officers or agents of the U.S., carry out their responsibilities in the District of Columbia, have substantial contacts in that District, and one or more of the Respondents are physically located within the territorial jurisdiction of the Court.

11. Venue is proper in the District of Columbia for this writ of habeas corpus because one or more of the Respondents resides within the jurisdiction of this Court and is amenable to service of process in the District. 28 U.S.C. §§ 1391(a), (b) & (e).

PARTIES

12. Petitioner Mohammad Munaf is a U.S. citizen. His passport number is [REDACTED]; it was issued February 2, 2000. *See* Ex. 1 (Mohammed Decl.) ¶ 7. He is currently incarcerated at Camp Cropper, and has been assigned detainee number 200175. *Id.* ¶ 16. Mr. Munaf has repeatedly requested that his captors provide him with U.S. counsel, but to date these requests have been denied.

13. Petitioner Maisoon Mohammed is Mr. Munaf's sister. Her declaration is attached as Exhibit 1. Ms. Mohammed is a U.S. citizen who resides in Michigan. Ex. 1 (Mohammed Decl.) ¶ 3. Ms. Mohammed has communicated with U.S. officials about her brother's imprisonment and is deeply concerned about Mr. Munaf's health and well being. *Id.* ¶¶ 14-15, 21. Because Mr. Munaf has been denied access to U.S. counsel and courts, Ms. Mohammed acts as his next friend. *Id.* ¶ 1.

14. Respondent Francis J. Harvey is Secretary of the U.S. Army. In that capacity, Respondent Harvey is the senior official of the Department of the Army. Respondent Harvey has authority over the custody and control of U.S. Armed Forces detainee operations in Iraq, including those held at Camp Cropper. As such, he is the custodian ultimately responsible for Mr. Munaf's detention. He is sued in his official capacity.

15. Respondent Major General William H. Brandenburg is Deputy Commanding General of Detainee Operations and Commanding General of Task Force 134, Multi-National Force-Iraq. Respondent Brandenburg has responsibility for detainee operations for the U.S. Armed Forces in Iraq. Respondent Brandenburg is charged with maintaining custody and control over all of the approximately 11,000 prisoners of the U.S. Army in Iraq, including those detained at Camp Cropper. He is sued in his official capacity.

16. Respondent Commander Colonel Steele is with the U.S. Army and is the commanding officer at Camp Cropper. His first name is unknown. Respondent Steele is Mr. Munaf's immediate custodian at Camp Cropper and has authority to release Mr. Munaf from U.S. custody.

STATEMENT OF FACTS

17. Mr. Munaf is a 53-year-old American-Iraqi citizen. Ex. 1 (Mohammed Decl.) ¶¶ 2, 4, 7. He was born in Baghdad, Iraq and emigrated to the U.S. in 1990. *Id.* ¶¶ 2, 6. He became a U.S. citizen in 2000. *Id.* ¶ 7.

18. In 1980, Mr. Munaf moved to Romania to start university studies. *Id.* ¶ 5. In 1989, Mr. Munaf married Georgette Victoria, a Romanian woman who later became an American citizen. *Id.* ¶ 6. They moved together to the U.S. in 1990 and lived in New York. *Id.* Between 1996 and 2001, Mr. Munaf and his family maintained residences in both Romania and the U.S. *Id.* ¶ 9. Since 2001, the family's residence has been solely in Romania. *Id.* Mr. Munaf and his wife have three children, all of whom are U.S. citizens who currently reside in Bucharest, Romania. *Id.* ¶ 8.

19. In March 2005, three Romanian journalists, Ovidiu Ohanesian, Marie Jeanne Ion, and Sorin Miscoci, invited Mr. Munaf to travel to Iraq with them as a guide and translator. The three Romanian journalists hired Mr. Munaf because of his ability to speak and read the Iraqi dialect of Arabic. They arrived in Baghdad on or around March 15, 2005. Mr. Munaf and the journalists subsequently traveled to an area southwest of Baghdad, Iraq. On or about March 28, 2005, unknown armed forces kidnapped them. *See* Ex. 1 (Mohammed Decl.) ¶ 11.

20. An Iraqi group identifying itself as the "Muadh Ibn Jabal Brigade" publicly claimed responsibility for the kidnapping. *Id.* ¶ 12. The group demanded that Romania withdraw its troops from Iraq and sought millions of dollars in ransom. *Id.* On or about May 22, 2005, after approximately fifty-five days of captivity, Mr. Munaf and the Romanian journalists were released. *Id.* ¶ 13, 14.

21. Upon their release, the journalists and Mr. Munaf were taken to the Romanian Embassy in Iraq. *Id.* ¶ 13. Mr. Munaf was transferred to U.S. custody that same day, immediately after the embassy visit. *Id.* ¶¶ 13-14. Mr. Munaf has remained in U.S. custody since that date.

22. Mr. Munaf is innocent. He has committed no crime or violent act against the U.S. or its allies, nor has he supported forces hostile to American interests. He has never been a member of or associated with al Qaeda or any other terrorist organization. He has never been a member of or associated with any insurgent group or militia. He is an innocent American citizen held unlawfully by his government in an Iraqi prison for more than

a year. The U.S. has told Petitioner Maisoon Mohammed that it does not have any evidence that Mr. Munaf violated any laws. *Id.* ¶ 15.

23. Petitioners have a real and immediate fear that the U.S. intends to transfer Mr. Munaf to Iraqi custody.

24. The transfer of Mr. Munaf to Iraqi custody would place him at grave risk of torture or death. There is evidence of systemic and widespread torture of prisoners in Iraqi custody, particularly Sunni Muslims such as Mr. Munaf. Furthermore, there is evidence that the Iraqi judicial system lacks even minimum standards of due process.

25. Upon information and belief, Mr. Munaf has been permitted to meet briefly with an Iraqi attorney, hired and paid for by his family in Iraq. *Id.* ¶ 18. Mr. Munaf's conversations with his Iraqi attorney are believed to be monitored by the U.S. military and are limited in duration. *Id.*

26. Mr. Munaf's family in Baghdad has been permitted to visit Mr. Munaf for thirty minutes approximately once per month for the last several months of his imprisonment. During a recent visit, on or about June 24, 2006, Mr. Munaf gave his family the name and phone number of Burke Pyle LLC, and asked his family to contact the firm on his behalf. *Id.* ¶ 20. Upon information and belief, Mr. Munaf has asked the U.S. military for permission to call the undersigned counsel, but his captors have denied this request. *Id.* ¶ 19.

27. Mr. Munaf is permitted to contact his wife and children in Romania by phone approximately once a month. *Id.* ¶ 21. These phone calls are monitored and limited in duration to approximately two to three minutes. *Id.*

28. In his conversations with his family, Mr. Munaf has maintained that he is innocent. *Id.* ¶ 22.

29. On or about April 9, 2006, U.S. military forces raided Mr. Munaf's parents' home in Baghdad, confiscating nearly $10,000 (USD) in cash, as well as jewelry, cameras, and other valuable items. In the course of the raid, significant damage was done to the house through the use of explosives. U.S. forces held a family member at gunpoint and forced her to open a safe which contained important family documents, including passports, all of which were seized. U.S. forces hooded Mr. Munaf's father, an 84-year-old man with dementia, and two of Mr. Munaf's nephews, ages 15 and 21. The U.S. forces arrested and imprisoned Mr. Munaf's nephews for several days without charge. When they were eventually released, the nephews were told by the U.S. military that their arrests had been a "mistake." Mr. Munaf's family suffered severe physical and psychological damage and continues to feel the effects of this attack. Upon information and belief, this attack was related to Mr. Munaf's unlawful arrest and imprisonment.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF UNLAWFUL DETENTION UNDER THE FIFTH AMENDMEN TO THE U.S. CONSTITUTION

30. Petitioners re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

31. Respondents' arbitrary and indefinite detention of Mr. Munaf without due process violates the "most elemental of liberty interests—the interest in being free from physical detention by one's own government" without due process of law. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (plurality op.). The laws and Constitution of the U.S. protect Mr. Munaf, a U.S. citizen, at least as much as they protected Mr. Hamdi.

32. Respondents' detention of Mr. Munaf is arbitrary because the U.S. has neither charged Mr. Munaf with a crime nor provided a lawful basis for his continued detention. Detention of an American citizen without trial or any other lawful process, and the denial of access to counsel, violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

SECOND CLAIM FOR RELIEF UNLAWFUL DETENTION UNDER THE SUSPENSION CLAUSE

33. Petitioners re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

34. Respondents' detention of Mr. Munaf violates the Habeas Corpus Suspension Clause of the U.S. Constitution. Article I, § 9, cl. 2. The Suspension Clause

guarantees Mr. Munaf the right to be charged with a criminal offense or released.

35. The Suspension Clause guarantees Mr. Munaf the right to meaningful judicial process to ascertain the legal and factual bases of his detention. Mr. Munaf has not been given a meaningful opportunity to review or respond to the allegations against him and thus continues to be denied the judicial process that is required absent suspension of the writ of habeas corpus.

THIRD CLAIM FOR RELIEF
UNLAWFUL DETENTION CONTRARY
TO THE CITIZEN NON-DETENTION ACT

36. Petitioners re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

37. Respondents' continued detention of Mr. Munaf violates the Citizen Non-Detention Act, 18 U.S.C. § 4001(a). The Act commands that: "No citizen shall be imprisoned or otherwise detained by the U.S. except as pursuant to an Act of Congress." No Act of Congress authorizes the continued detention of Mr. Munaf, and therefore his detention violates the Citizen Non- Detention Act.

FOURTH CLAIM FOR RELIEF
UNLAWFUL DETENTION CONTRARY
TO ARMY REGULATIONS

38. Petitioners re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

39. Respondents' arrest and detention of Mr. Munaf violates Army Regulation 190-8, which prohibits the prolonged and unlawful detention of civilians. *See, e.g.*, Army Regulation 190-8 at 1-6(g) ("Persons who have been determined by a competent tribunal not to be entitled to prisoner of war status may not be executed, imprisoned, or otherwise penalized without further proceedings to determine what acts they have committed and what penalty shall be imposed.").

40. By Respondents' own admission, Mr. Munaf is a civilian held without charge who presents no security threat to the U.S., and who has been denied access to a competent tribunal. Ex. 1 (Mohammed Decl.) ¶ 17. His detention therefore violates Army Regulation 190-8 and the Administrative Procedures Act, 5 U.S.C. § 701 *et seq.*

FIFTH CLAIM FOR RELIEF
PROLONGED ARBITRARY DETENTION IN VIOLATION OF INTERNATIONAL LAW

41. Petitioners re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

42. Respondents continue to breach their obligations under customary international law, accepted by, and binding on, the U.S., by seizing and continuing to hold Mr. Munaf, a U.S. citizen, without justification, charge, or judicial proceeding. International law, as defined by the International Covenant on Civil and Political Rights and according to the customary international law of armed conflict and international human rights, prohibits prolonged arbitrary detention of noncombatants such as Mr. Munaf.

SIXTH CLAIM FOR RELIEF
DENIAL OF ACCESS TO COUNSEL UNDER THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

43. Petitioners re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

44. Respondents have denied Mr. Munaf access to American counsel and ignored his repeated requests for access to U.S. counsel and courts. This conduct violates the Fifth Amendment to the U.S. Constitution, which prohibits the government from denying American citizens in its custody access to counsel when they request it.

SEVENTH CLAIM FOR RELIEF
THREAT OF UNLAWFUL TRANSFER TO FOREIGN SOVEREIGN

45. Petitioners re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

46. Respondents threaten to transfer Mr. Munaf to Iraqi custody at any time without advance notice to counsel or to the Court, without legal authority, and without an opportunity for Mr. Munaf to challenge the basis for his prolonged detention, notwithstanding the substantial risk that he would be tortured and denied due process if handed over to the Iraqis.

47. The transfer or threatened transfer of a U.S. citizen to a foreign sovereign without judicial review, without lawful authority, and without an opportunity to challenge the basis for his detention violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution; the federal habeas corpus statute, 28 U.S.C.

§ 2241; the Habeas Corpus Suspension Clause, Art I, § 9, cl. 2; Common Article 3 of the Geneva Conventions; and customary international law.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

(A) Order Respondents to ensure that Mr. Munaf receives a copy of this petition, and any Order this court may issue;

(B) Order Respondents to allow undersigned counsel to meet with Mr. Munaf, in private and unmonitored attorney-client conversations, by phone, by video conference, and in person;

(C) Order Respondents to cease all interrogations of Mr. Munaf, whether direct or indirect, in the absence of undersigned counsel;

(D) Issue a Writ of Habeas Corpus requiring Respondents to release Mr. Munaf from detention, and requiring Respondents to bring Mr. Munaf before a court of competent jurisdiction in the U.S. to show just case for his continued detention;

(E) Convene an evidentiary hearing and order Respondents to produce Mr. Munaf in person for the hearing;

(F) Issue an injunction prohibiting the U.S. from transferring Mr. Munaf to the legal or physical custody of another soveriegn; and

(G) Order such other relief as the Court may deem necessary and appropriate to protect Mr. Munaf's rights.

Dated: August 15, 2006

Respectfully submitted,

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Counsel for Petitioners

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 06-1455 (RCL)

MAISOON MOHAMMED, ET AL., PETITIONERS

v.

FRANCIS J. HARVEY, ET AL., RESPONDENTS

DECLARATION OF JOHN D. GARDNER

I, Major General John D. Gardner, pursuant to 28 U.S.C. § 1746, hereby declare and say as follows:

1. I currently serve as the Deputy Commanding General for Detainee Operations (DCG-DO) Multi-National Force-Iraq (MNF-I). In this capacity, I am charged with the responsibility for oversight in several areas, including:

- Safeguard and secure all persons who are in custody at the MNF-I detention centers and protected areas.

- Operation and focus of the MNF-I Joint Interrogation and Debriefing Center to provide high-quality actionable strategic, operational, and tactical intelligence to the warfighters.

- Maximize efficiency and provide due process in the referral of security internees and detainees to the Iraqi legal system.

- Integrate Iraqi leadership and partnership in all facets of Detainee Operations.

I make these statements based upon my personal knowledge and upon information made available to me in the performance of my official duties.

2. MNF-I is a coalition force consisting of approximately twenty-seven different nations that operates in accordance with the mandate of United Nations Security Council Resolutions (UNSCR) 1546 (2004) and 1637 (2005). Resolution 1637 extended the mandate of MNF-I for another year on behalf of and at the request of the Iraqi government. MNF-I is authorized "to take all necessary measures to contribute to the maintenance of security and stability in Iraq." Such measures include the ability to detain individuals "where this is necessary for imperative reasons of security."

3. Mr. Mohammed Munaf Mohammed (Munaf), a citizen of Iraq, Romania, and the United States, is in MNF-I custody pursuant to UNSCR 1546 and 1637, which allows MNF-I to intern individuals who are considered to be an imperative threat to the security of Iraq. He was captured by Coalition Forces on May 23, 2005.

4. Munaf was captured on May 23, 2005 during a targeted raid. He was detained by Coalition Forces for his suspected involvement in the kidnapping of foreign nationals (three Romanian journalists).

5. Following Munaf's capture, on July 18, 2005 a panel of three Military officers, acting in their capacity as members of MNF-I, conducted a comprehensive review of Munuf's status and detention. The panel reviewed the facts and circumstances surrounding the capture, interviewed witnesses, and considered available intelligence information. Munaf was present at the hearing and had the opportunity to hear the basis on which he was being detained, to make a statement, and to call witnesses who were immediately available. The panel determined that Munaf was considered a security internee and should be further interned.

6. Subsequently, Munaf's case was referred to the Central Criminal Court of Iraq (CCCI) for adjudication. U.S. authorities indicated no objection to Iraqi plans to prosecute Mr. Munaf in the CCCI.

7. The CCCI in Baghdad is the only court in Iraq with nationwide jurisdiction, thereby eliminating venue and jurisdictional issues across the various courts of session among the 18 provinces. The CCCI has discretionary investigative and trial jurisdiction over all crimes that threaten the sovereignty of Iraq and crimes against Coalition Forces, including acts of terrorism. The CCCI operates under the Iraqi Penal Code of 1969 and the 1971 Iraqi Law on Criminal Proceedings. It is an Iraqi court under Iraqi governance and it is compromised of Iraqi judges who have attended the Iraqi Judicial School and is administered by the Iraqi Higher Judicial Council.

8. The CCCI operates using a modified continental, inquisitorial judicial process, and not the English adversarial judicial system. The CCCI is divided into two chambers—an investigative court and a felony trial

court. Under this system, the investigative judge conducts an investigative hearing in chambers to determine if there is sufficient evidence to warrant a trial. Witnesses provide sworn testimony and the investigative judge questions the witnesses to clarify their testimony. Defense counsel is allowed to present questions to the court for review. If the investigative judge accepts any question, he asks the question of the witness. Upon the conclusion of evidence presentation, the investigative judge questions the defendant, who is not required to respond. The investigative judge makes the determination of whether there are sufficient grounds to forward the case to the Trial Court. If he finds there is sufficient evidence, he forwards a report of the investigative proceeding and recommends charges to the Trial Court.

9. The Trial Court sits in panels of three judges, who review the findings of the investigative judges and listen to any additional evidence in a formal courtroom setting. After a case is forwarded for trial, a Trial Panel may return the case for further investigation before a date is set for trial. Trial Panel judges may ask questions, similar to the process used in the investigative hearing. Upon the conclusion of the case, the Trial Panel judges enter a verdict and either release the defendant or sentence him, which can include a prison term. Sentences imposed by the Trial Court are those prescribed in the Iraqi Penal Code as amended by CPA orders. Sentences may be reduced at the discretion of the Chief Judge of the Trial Court while appeals are made to the Iraqi Court of Cassation.

10. Defendants are represented at the investigative hearing by counsel retained at their own expense, or, more typically, by court-appointed defense counsel. De-

fense counsel at the investigative hearing functions primarily to ensure the defendant's procedural rights are not violated. The defendant is also entitled to court-appointed defense counsel for trial. Munaf is represented by his own Iraqi Counsel.

11. Munaf admitted on camera, in writing, and in front of an Iraqi Investigative Hearing Judge that on 28 March 2005 he participated as an accomplice in the kidnapping of three Romanian journalists. Munaf was assisted by Ibrahim Al Giuburi (Munaf's brother-in-law) (Ibrahim), Omar Hayssam (the alleged mastermind of the kidnapping plan) (Hayssam), and Omar Mahmmod (Hayssam's brother).

12. Munaf has made several confessions in writing, on camera, and in front of an Iraqi Investigative Hearing Judge outlining the kidnapping plan he was involved in. According to Munaf's multiple statements he first met with Hayssam in January 2005 to discuss the kidnapping plans. The first plan was to kidnap the Romanian Senator Vasile Ion or a Romanian businessman. Hayssam had a close relationship with Senator Ion. Munaf allegedly refused to participate in this plan. The entire reason for Hayssam wanting to conduct a kidnapping stems from his intention to gain the support of the Romanian President Traian Basescu to develop new business in Romania. It appears that Hayssam was going to covertly help kidnap the victims, and then increase his own stature by negotiating their release.

13. According to Munaf, Hayssam developed another plan to kidnap Marie Jeanne Ion (the daughter of Senator Vasile Ion) and two other journalists when they traveled to Iraq. He came up with this plan after allegedly seeing the Al Jazeera story of the Italian journalists

being kidnapped and held for ransom. In this plan, Munaf was to travel with Marie and the other two to Iraq ostensibly as their guide and translator and help facilitate the kidnapping. Hence, Munaf would act as though he was a kidnap victim too.

14. Munaf stated that he was contacted by Hayssam on March 21, 2005, and asked to follow the kidnapping plan. Munaf claims that he opposed the plan but that he agreed to it after much pressure was to put on him to go along. Munaf met with Ibrahim in Iraq a few days before the kidnapping and received a more detailed description of the kidnapping plan. The kidnapping was to take place on March 28, 2005, at an arranged location about 70 kilometers outside of Baghdad. According to Munaf, on the morning of March 28, Munaf met with Ibrahim and a man named Hagji (the apparent contracted kidnapper). Hagji asked for $30,000 - half to be paid before the kidnapping, and half to be paid after the kidnapping. Munaf only had $14,000 at the time, so he called Hayssam to send him the rest. Hayssam said that his brother (Samir) would send the rest of the money the next day. The kidnapping was conducted at the appointed place on March 28th. The kidnappers blocked passage of the victims' car and took hostage Munaf, Marie Jeanne Ion, and the other two journalists.

15. Munaf has appeared at four investigative hearings at CCCI (23 Nov 2005, 19 Jan 2006, 15 Feb 2006, 28 Feb 2006.) Two appearances were made as a witness against the other defendants and two appearances were made as a defendant. Although Munaf remains in the physical custody of MNF-I, the government of Iraq has control over the disposition of Munaf's case because the

criminal proceedings before the CCCI already have been initiated.

16. At both sets of investigative hearings, acting as both a witness and a defendant, Munaf positively identified the other kidnappers and admitted to his role in the original kidnap scheme. The Iraqi judge presiding over Munaf's investigative hearing has determined that sufficient evidence exists to bring Munaf's case to a Trial Panel as a defendant. In addition, Munaf is also involved in another trial as a victim. The Iraqis docketed both trials for September 10, 2006, but they were postponed until September 19, 2006. Munaf will likely be charged with kidnapping and an accomplice to kidnapping at his trial.

17. MNF-I maintains physical custody of detainees while their cases are being heard by the CCCI. They are held as security internees in accordance with UN Security Council Resolutions 1546 and 1637 until the case is resolved. If they are convicted and sentenced to a term of imprisonment, the Trial Court will issue an Order, which is sent to Task Force 134. There is no set time frame for when Iraqi Trial Courts formally document convictions. Generally, this occurs within a few days of trial. Once the original formal Trial Court documentation is received and processed, we will issue a subsequent transfer order releasing the detainee to an Iraqi Ministry of Justice facility. Once we formally direct transfer from MNF-I to the Iraqi Ministry of Justice, the normal administrative period for actual transfer, which may be affected by myriad factors, is approximately two to three weeks.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 15th day of September 2006.

/s/ JOHN D. GARDNER
JOHN D. GARDNER
Major General, U.S. Army
Deputy Commanding General
Detainee Operations

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 06-1455 (RCL)

MAISOON MOHAMMED, ET. AL., PETITIONERS

v.

FRANCIS J. HARVEY, ET AL. RESPONDENTS

DECLARATION OF SEAN RIORDAN

I, Sean Riordan, declare under penalty of perjury that the following statements are true and correct, to the best of my knowledge, information, and belief:

1. I am a third year student at UCLA School of Law. I am presently working for the semester as a full-time legal intern at the Brennan Center for Justice at NYU School of Law. I have conversational ability in Arabic.

2. On September 19, 2006, I spoke by telephone with Batool Mohammed ("Batool"). Batool is Mr. Munaf's sister. She lives in Baghdad and was reached by telephone.

3. Maisoon Mohammed, the sister of Batool and Mr. Munaf, joined the September 19, 2006 telephone call with Batool and helped translate between English and Arabic in order to ensure accuracy.

4. During the telephone call, Batool conveyed to me the information contained in paragraphs 5-11 of this declaration. Batool told me that she is perfectly willing to execute a declaration in her own name, but that the security situation in Baghdad is so perilous that it is not safe for her to travel to a fax machine. She told me, however, that all of the information in paragraphs 5-11 of this declaration is true and correct. Batool further stated that she obtained all of the information in paragraphs 5-11 of this declaration from her visits with Mr. Munaf in prison and her conversations with Mr. Munaf by telephone.

5. Mr. Munaf has been held in United States custody in Iraq since May 2005, and remains in U.S. custody today.

6. During his confinement, Mr. Munaf has been threatened with torture and subjected to abuse and mistreatment in an effort to coerce statements from him.

7. For more than seven months Mr. Munaf was held in complete isolation in a small box-like cell.

8. Mr. Munaf and his family have been threatened with violence by both U.S. and Romanian officials. Officials told Mr. Munaf that if he did not confess to criminal acts that both he and his sister in Iraq would be sexually assaulted. Officials also told Mr. Munaf that if he did not confess to wrongdoing, his wife in Romania would be sexually assaulted.

9. Mr. Munaf know that other detainees in the same prison have been beaten and tortured by officials to coerce statements.

10. Mr. Munaf has maintained and continues to maintain his innocence. Any incriminating statements that he might have made were the direct result of coercion and threats.

11. Mr. Munaf is currently scheduled for his next hearing in Iraqi criminal court on September 24, 2006. At this hearing, Mr. Munaf plans to explain the coercion and threats that he has been subjected to and his family believes he will attempt to clear his name.

Date: September 20, 2006 /s/ SEAN RIORDAN
SEAN RIORDAN

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 06-1455 (RCL)
MAISOON MOHAMMED, ET. AL., PETITIONERS

v.

FRANCIS J. HARVEY, ET AL., RESPONDENTS

SUPPLEMENTAL DECLARATION OF SEAN RIORDAN

I, Sean Riordan, declare under penalty of perjury that the following statements are true and correct, to the best of my knowledge, information, and belief:

1. I am a third year student at UCLA School of Law. I am presently working for the semester as a full-time legal intern at the Brennan Center for Justice at NYU School of Law. I have conversational ability in Arabic.

2. On October 12, 2006, I spoke by telephone with Badie Arrief Izzat. Mr. Izzat is Petitioner Mohammed Munaf's lawyer in Iraq. Mr. Izzat was reached at 011 964 (790) 130 6472.

3. Petitioner Maisoon Mohammed, Mr. Munaf's sister who lives in Detroit, Michigan, participated in the October 12, 2006 telephone call with Mr. Izzat and helped translate between English and Arabic in order to ensure accuracy.

4. During the telephone call, Mr. Izzat conveyed to me all of the information contained in paragraphs 5-15 of this declaration. Mr. Izzat said he is willing to execute a declaration in his own name, but authorized me to provide this declaration on his behalf because of the imminent, irreparable harm to Mr. Munaf and logistical problems of sending a fax from Baghdad. He affirmed that all of the information contained in paragraphs 5-15 of this declaration is true and correct based upon his first-hand knowledge.

5. On the morning of October 12, 2006, Mr. Munaf and several other co-defendants were convicted and sentenced to death by Judge 'Abd al-Amir Abdullah Al-Rubaay of the Central Criminal Court of Iraq.

6. No witnesses for the defendants were present at the October 12, 2006 proceeding ("the proceeding") because Judge Al Rubaay and the defendants' lawyers had previously agreed that the charges would be dropped. The Romanian embassy had not come forward to press charges, and there were no grounds for prosecution. As a result, the defendants' lawyers arrived at the proceeding believing the case would be dismissed. Indeed, Mr. Badie had previously been told by the judge, off-the-record, that Mr. Munaf would be acquitted.

7. Two United States military officials attended the proceeding. One was an American soldier who stated to the court that he was appearing on behalf of the Romanian embassy to seek the death penalty for Mr. Munaf and the other de-

fendants. He did not offer any written proof that he had been delegated to represent the Romanian embassy. The other official was an American general who told the judge in open court that the defendants should all be convicted and sentenced to death.

8. Judge Al-Rubaay disagreed with the general.

9. During the proceeding, Mr. Munaf told the judge that he had previously made incriminating statements because American and Romanian officials had told him that if he did not confess they would beat him and would sexually assault members of his family in Romania and Iraq. Mr. Munaf stated that he was completely innocent.

10. Most of the defendants showed to Judge Al-Rubaay the physical marks on their bodies from beatings they received while in U.S. custody.

11. The American general insisted that the defendants were guilty and that they should be executed.

12. Judge Al-Rubaay then excluded from the court everyone except the military officials and his judicial assistants. He met with the two American military officials and his judicial assistants for 15 minutes. Neither the defendants nor their counsel were present during that meeting.

13. When the defendants and their counsel were again admitted to the court, Judge Al-Rubaay convicted and sentenced Mr. Munaf and four other defendants to death. Judge Al-Rubaay

did not provide any oral or written justification for the convictions or sentences.

14. The entire proceeding lasted only an hour-and-a-half. No evidence or witnesses were presented to the court.

15. In 36 years practicing law in Iraq, Mr. Izzat had never before seen or heard of a death sentence being handed down without deliberation or consideration of the merits.

Dated: October 12, 2006 /s/ SEAN RIORDAN
SEAN RIORDAN

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 06-1455 (Rcl)

MAISOON MOHAMMED, ET. AL., PETITIONERS,

v.

FRANCIS J. HARVEY, ET. AL., RESPONDENTS

SECOND SUPPLEMENTAL DECLARATION OF SEAN RIORDAN

I, Sean Riordan, declare under penalty of perjury that the following statements are true and correct, to the best of my knowledge, information and belief:

1. I am a third year student at UCLA School of Law. I am a full-time intern at the Brennan Center for Justice at NYU. I have conversational ability in Arabic.
2. On October 16, 2006 I spoke by telephone with Batool Mohammed ("Batool"). Batool is the sister of Petitioner Mohammed Munaf ("Mr. Munaf.") She lives in Baghdad. She was reached by telephone at [Redacted].
3. Petitioner and next friend Maisoon Mohammed, the sister of Batool and Mr. Munaf, joined today's telephone call with Batool and helped translate between English and Arabic in order to ensure accuracy.
4. During the telephone call, Batool conveyed to me all of the information contained in paragraphs 5-9

of this declaration. Batool said she was willing to execute a declaration in her own name, but authorized me to provide this declaration on her behalf because of the danger of traveling to or from a location with a fax in Baghdad. Batool affirmed that all of the information she conveyed to me is true and correct and is based on a visit with Mr. Munaf at Camp Cropper on October 15, 2006.

5. After being convicted and sentenced to death on October 12, 2006, by the Central Criminal Court in Iraq, Mr. Munaf was transferred to a windowless cell, approximately 2 meters by 2 meters in dimension, where he is kept in solitary confinement 23 hours a day. All of his clothes and personal possessions except for a Koran have been taken from him, and he has been forced to wear a yellow suit reserved for individuals sentenced to death.

6. Mr. Munaf broke down and cried upon seeing Batool and other family members. Mr. Munaf told them that for one hour each day he is released into a cage with men who are standing trial for murder. These men have threatened him and he fears that they will hurt him.

7. On several occasions since receiving his death sentence, Mr. Munaf's American custodians have performed painful searches of body cavities which humiliate and degrade him.

8. An American soldier who supervised the visit between Mr. Munaf and his family stated that all future visits and phone calls between Mr. Munaf and his family members would be prohibited. The soldier said that the only reason that the family

was allowed to visit Mr. Munaf on October 15 was that the visit had been arranged prior to Mr. Munaf's death sentence.

9. Mr. Munaf's mother mailed him some nuts and other traditional food so that he could celebrate Ramadan, but Mr. Munaf's American custodians would not deliver these items to him.

Date: October 16, 2006 /s/ SEAN RIORDAN
SEAN RIORDAN

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 06-1455 (RCL)

MAISOON MOHAMMED, ET AL., PETITIONERS

v.

FRANCIS J. HARVEY, ET AL., RESPONDENTS

[Oct. 16, 2006]

DECLARATION OF ROBERT M. PIRONE

I, Lieutenant Robert M. Pirone, hereby declare and say as follows:

1. I am a commissioned officer in the United States Coast Guard currently serving as an attorney at the Central Criminal Court of Iraq (CCCI) Liaison Office in Baghdad, Iraq. In this position, I assist in bringing evidence and witnesses to the CCCI at Investigative Hearings (IHs) for cases involving MNF-I Coalition Forces (MNF-I). I also bring complaints on behalf of MNF-I members at the CCCI for crimes against MNF-I soldiers or citizens of MNF-I members.

I make the following statements based upon my personal knowledge:

2. MNF-I is a coalition force consisting of approximately twenty-seven different nations that operates in accordance with the mandate of United Nations Security Council Resolutions (UNSCR) 1546 (2004) and 1637 (2005). Resolution 1637 extended the mandate of MNF-

I for another year on behalf of and at the request of the Iraqi government. The nation of Romania is a member of the MNF-I coalition forces.

3. On October 12, 2006, Mr. Mohammed Munaf Mohammed (Munaf), a Romanian-Iraqi-American citizen, appeared at the CCCI before a Trial Panel consisting of three Iraqi judges—Judge Abdul Ameer Abdul Kareem, Judge As'ad Dawood Salman, and Judge Dawood Abdul Kareem—to face kidnapping charges under Article 421 of the Iraqi Penal Code, the substance of which were previously the subject of four CCCI Investigative Hearings (IHs). Munaf was represented at the IHs by Iraqi defense attorneys and at the trial by another Iraqi defense attorney, Mr. Badie Arrief Izzat (Badie). At all of the IHs and the trial, Munaf and his attorneys were given the opportunity to submit any evidence or bring any witnesses in Munaf's defense. The Trial Panel found Munaf, along with his five co-defendants, guilty of kidnapping, and sentenced them to death.

4. Munaf is the only defendant of the six defendants in this case who is or has been in MNF-I custody. The other five detainees are presently in the custody and have always been in the custody of the Iraqi Ministry of the Interior (MOI) or the Iraqi Ministry of Justice (MOJ). At the trial, a single defendant, who has never been in MNF-I custody, lifted his shirt and stated that the Iraqis had beaten him. This defendant made no accusations against MNF-I or anyone other than the Iraqis. Another of the defendants, who is also in Iraqi custody, attempted to show the judges an injury to his arm, but the judges stopped him. This defendant has never been in MNF-I custody and did not make any statements against MNF-I or anyone other than the Iraqis.

No other defendant either displayed physical marks on their persons to the Court or made statements to the Court regarding abuse.

5. Munaf and the five co-defendants previously confessed at an IH, in front of an Iraqi IM Judge, to carrying out and being accomplices in the kidnapping of three Romanian citizens—Marie Jeanne Ion, Sorin Dumitru Miscoci, and Ovidiu Ohanesian.

6. At the trial, the three-judge Trial Panel considered all the evidence presented at the Investigative Hearings. This evidence included the sworn confessions from the defendants that were given to Iraqi IH Judges of the CCCI. The judges of the Trial Panel also questioned all six defendants at the trial and took additional statements from them. At trial, five of the defendants, including Munaf, recanted their previous confessions, alleging that the Iraqis and/or the Romanians had forced them to confess. None of the defendants, including Munaf, alleged that MNF-I had forced them to confess. One defendant did not give a statement to the judges; he refused to answer the Iraqi judges' questions and acted as though he was mentally handicapped. The court requested and heard live testimony of an Iraqi employee from MOJ who stated that this particular defendant did not have any mental problems, was perfectly normal, and had never before acted the way he was then acting before the Court.

7. As part of my responsibilities in bringing complaints on behalf of MNF-I members to the CCCI for crimes against MNF-I soldiers or the citizens of MNF-I members, I appeared at the trial to make the formal complaint for the Romanian Government about the kidnapping of the three Romanian citizens by the defen-

dants. I was sworn-in, and through an interpreter who was also sworn-in, stated that I had met with a member of the Romanian Embassy who authorized me to make this complaint on behalf of the Romanian Government. The Romanian Embassy had authorized me to do this in a signed and stamped letter that had been submitted to the Court weeks in advance of the trial. At no time did I ask or request of the Court that the defendants receive the death penalty or any other penalty. My role and statements were limited to answering the Court's questions about the facts of the case (as stated in the confessions of the defendants), and making the formal complaint, as required by Iraqi law, on behalf of an MNF-I member nation.

8. No other member of MNF-I participated in the trial in any capacity. At no time did an American General, any other officer of the United States, or any General or officer of any MNF-I member nation appear at the trial. None of the other MNF-I personnel who attended the trial with me made any statements at the trial; rather, they merely observed the proceedings or acted as guards.

9. In addition to the statements given by myself, the Iraqi MOJ official, and the five defendants who made a statement, the three Judges of the Trial Panel also received arguments from the Iraqi Prosecutor and multiple defense attorneys. The Iraqi Prosecutor stated that there was enough evidence presented at the IHs and the trial to find the defendants guilty of kidnapping under Article 421 of the Iraqi Penal Code.

10. The Trial Panel then closed the courtroom and asked all persons to leave the courtroom. I and all other MNF-I personnel left the courtroom at that time. Once

the courtroom was cleared, the three judges deliberated. During the entire deliberation time, I stood out in the court lobby and had a conversation with Munaf's Iraqi attorney, Badie. At no time during the trial was I present in the courtroom with members of the court when defense counsel were not also present.

11. Munaf's trial had been scheduled and delayed several times over many months based on objections from his attorney, Badie. During these months of delay, the evidence in the case file at CCCI was available for inspection by Munaf's attorney, Badie. After several delays, I was personally present on September 24, 2006 when Badie appeared before Judge Abdul Kareem and the judge asked Badie if he had any more objections and whether he was ready to proceed. Badie stated he had no more objections, and was ready to proceed. Badie and Munaf both signed a notification that the trial would proceed on a specified date. There were no assertions made at this meeting by the judge that case would be withdrawn, the charges would be dropped, or Munaf would be acquitted. I am not aware of any statements by any of the three judges in Munaf's case that the case would be withdrawn, the charges would be dropped, or Munaf would be acquitted.

12. Based on my prior first-hand participation in and observation of numerous CCCI Trial Panel proceedings, the proceedings of the October 12, 2006 Trial Panel that resulted in Munaf's conviction and sentencing were conducted in an orderly manner and followed established procedures of the CCCI.

13. Under the Iraq Law of Criminal Proceedings of 1971, Paragraph 224/D, a defendant who receives a death penalty gets an automatic appeal to the Iraqi

Court of Cassation. The defendant has thirty days from the day after sentencing to submit materials to the Court of Cassation for his appeal.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 16th day of October, 2006.

/s/ ROBERT M. PIRONE
ROBERT M. PIRONE
Lieutenant, U.S. Coast Guard
CCCI Liaison Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. CV 06-1455 (RCL)

MAISOON MOHAMMED, ET AL., PETITIONERS

v.

FRANCIS J. HARVEY, ET AL., RESPONDENTS

Oct. 19, 2006

ORDER

In accordance with the Memorandum Opinion issued this date, and upon consideration of the petitioners' Petition [1] for Writ of Habeas Corpus, the Motion [6] and Supplemental Motion [12] for Temporary Restraining Order, the opposition, reply thereto, and supplemental materials, and after hearing argument and considering the applicable law and the entire record herein, it is hereby

ORDERED that petitioners' Petition [1] for Writ of Habeas Corpus is DISMISSED with prejudice for lack of subject matter jurisdiction; and it is further

ORDERED that the Motion [6] and Supplemental Motion [12] for Temporary Restraining Order are DENIED as moot.

SO ORDERED.

Signed by Royce C. Lamberth, United States District Judge, October 19, 2006.

WHO IS LYING: IN MUNAF'S CASE?

21 October 2006	By Marina Constantinoiu

An American lieutenant, states that he was present at the trial of Muhamad Munaf, in Iraq, in order to formulate an official complaint on behalf of the Romanian Government. The Romanian [Government] knows nothing about it. If that's the case, where does the truth lie?

A week after learning the news regarding the death penalty sentence by hanging, of Mohamad Munaf, the Iraqi-American guide of the Romanian hostages in Iraq, the fog regarding the trial where the sentence has been pronounced is getting thicker.

While, last Saturday, the Romanian authorities stated that they did not know anything about Munaf's trial in Baghdad, yesterday we learned that a lieutenant by the name of Robert Pirone, legal counselor at the Liaison Office—Central Iraqi Tribunal in Baghdad, was present at the Court proceedings, to formulate the official complaint on behalf of the Romanian Government.

THE DENIAL On Thursday, the Courts of District of Columbia rejected the American lawyers' the petition, which requested that Muhamad Munaf should not be handed over to the Iraqis after being sentenced to death. The Washington Courts rejected the petition (as 'unfounded') and declined Its own competence to deal with the case of the accused/defendant, arguing that it did not apply to Its' jurisdiction, because he [the defendant] was under the Multinational Force custody. According to MEDIAFAX, Jonathan Hafetz, one of Munaf's lawyers in the US, considers [deems] the decision

unfair and states that he would appeal to a Federal Court.

THE SURPRISE FACTOR The statement introduction (on which the sentence was based), contains many precious [pieces of] information, which makes the case of Munaf an even deeper mystery. Thus, we learn that, according to the reasoning/argument presented and signed by Judge Royce C. Lamberth, representing the Pentagon—plaintiff in the trial brought by Munaf's lawyers in the US—stated that Pirone was present at the trial, as a member of the Multinational Force in Iraq. He declared, under oath, that he attended the trial in order to launch "an official complaint on behalf of the Romanian Government, regarding the hostage taking where Romanian nationals [citizens] were the victims". At the trial, Pirone was under oath: and the "'notarized authorization [i.e. notarized power of attorney] to represent the Romanian Embassy at the trial has been filed a few weeks before"

MANDATE He stressed the fact that his presence at the trial was restricted to answer questions regarding the case, based on previous testimonies of the people accused, and also, to launch an oficial complaint, in accordance with the Iraqi legislation.
Was he there on his own? Was that HIS idea?
Pirone states that Munaf and the other 4 sentenced to death, had the right to make their own statements. Munaf has given a statement, re-affirming that he is innocent, and that the previous confessions were taken by using coercive means.

According to Pirone, no other member of the Multinational Force, was present at the trial; other present members were only as observers and guardians. "No

American General, or Military General was present to represent any country of the coalition"—says Pirone. One more detail that contradicts previous statements, even of that of the President Basescu; according to the document signed by the American Judge, "the Romanian hostages have been set free in May 2005, during a raid conducted by the troops under the Multinational Forces Command". President Basescu stated at 22nd of May, that setting the hostages free is: 'an operation executed 100% by the Romanian Secret Information Services'.

APPEALS: Based on the same document, released by Mr. Jonathan Hafetz—Mr. Munaf defense lawyer, and published in the 'Jurnalul National[1]', we learn that the procedures to transfer detainees (who have been previously sentenced by the Iraqi Courts) in the custody of the Multinational Forces, takes two to three weeks. A death penalty sentence case has automatically right to appeal to Higher Courts[2] , within 30 days since the sentencing.

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[1] Translator's Note - "Jurnalul National" - Romanian Newspaper.

[2] Translator's Note - "Curtea de Casatie" - Highest Courts - Federal/ Supreme Court.

JUSTICE DEPARTMENT CLAIMS NO INOLVEMENT

The Ministry of Justice claims it had no knowledge of delegating any American officer to represent the Romanian Government in the Munaf trial. Mr. Razvan Radu, Department Chief—International Law and Treaties Direction, stated that: "Ministry has not given power of attorney to any American lawyer to represent the Romanian Government during the trial". According to him, the institution he is representing, had no knowledge about such representation. "It didn't make any sense to authorize anyone to represent the Romanian Government, considering the fact that our country [i.e. Romania] has exercised (and still does), its own jurisdiction regarding the accusations brought against Munaf. Right from start, legal proceedings in the case of the Romanian hostages, have been executed by the Romanian Appellate Courts; the indictment written by the Romanian prosecutors, as well as the brief have been sent to the local jurisdiction. Both the Iraqi and American have been notified", says Mr. Razvan Radu. Theoretically, both Romania and Iraq had the competence to conduct legal proceedings; because the victims were Romanian citizens and because the crime has taken place there [i.e. Iraq]." What we have here is a conflict of jurisdiction, but the competent Romanian authorities (Appellate or other Courts) have never requested legal proceedings be transferred to local Iraqi courts", said Mr. Razvan Radu.

***Miruna Pasa**

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JURNALUL NATIONAL

ULTIMA ORA

Miercuri, 25 Octombrie 2006

Eveniment
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S.O.S. - Salvati spatiul verde!
Romania cu ochi albastri
Kitschul nostru cel de toate zilele
Jurnalul unui condamnat la moarte
Special
Observator
Politic
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Viata sanatoasa
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Istoria Comunismului
Monden
Sport
Concurs

Cursul Valutar

USD 2.8188 lei

EUR 3.5359 lei

Prima Pagina

Cine minte in cazul Munaf?

21 Octombrie 2006 | de Marina Constantinoiu

Un locotenent american afirma ca a participat la procesul din Irak al lui Mohammad Munaf, pentru a formula plangerea oficiala din partea Guvernului roman. Romanii nu stiu nimic. In cazul asta, unde-i adevarul?

La o saptamana de la aflarea vestii privind condamnarea la moarte prin spanzurare a ghidului irakiano-american al ziaristilor romani rapiti in Irak, Mohammad Munaf, ceata in legatura cu procesul in care s-a dat sentinta s-a indesit. De bine ce sambata trecuta, autoritatile romane spuneau ca nu stiau nimic despre un proces al lui Munaf la Bagdad, ieri am aflat ca un anume locotenent Robert Pirone, avocat la biroul de legatura cu Tribunalul Penal Central Irakian din Bagdad, ar fi fost prezent la tribunal, pentru a formula plangerea oficiala din partea Guvernului roman.

RESPINGERE. Tribunalul districtului Columbia a respins joi petitia avocatilor americani prin care se cerea ca Mohammad Munaf sa nu fie predat autoritatilor irakiene, dupa condamnarea acestuia la moarte. Tribunalul din Washington a respins ca "neintemeiata" petitia si si-a declinat competenta in abordarea cauzei condamnatului, argumentand ca nu intra in jurisdictia sa, el aflandu-se in custodia Fortei multinationale. Jonathan Hafetz, unul dintre avocatii lui Munaf din SUA, considera nedreapta decizia si afirma ca va face apel la o curte de apel federala, potrivit Mediafax.

SURPRIZA. In preambulul motivatiei care a stat la baza deciziei sunt cuprinse insa informatii pretioase, care adancesc si mai tare misterul din cazul Munaf. Astfel aflam, conform motivatiei semnate de judecatorul Royce C. Lamberth, ca reprezentantii Pentagonului - parte reclamata de avocatii lui Munaf din SUA - afirma ca locotenentul Pirone a fost prezent la proces in calitate de membru al Fortei Multinationale din Irak. Acesta ar fi declarat, sub juramant, ca a fost prezent la tribunal

ALTE VREMURI. Ghidul zi rapiti in Irak, la momentul ostatic", alaturi de

Preferinte
Adauga comentariu
Vezi comentarii
Trimite pe email
Varianta print
Mai multe de Marina Const
Din aceeasi sectiune

Observator
- Romania eterna
- Provocare - Votati rocku
- Editie de colectie - Cata
- Cumparari - Vanzari - En
- Cine minte in cazul Mun
- Observator - Romania in
- Optiune - Scoli de lux cu
- Criminal in libertate
- D-ale globalizarii

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pentru a face "o plangere oficiala din partea Guvernului Romaniei referitoare la rapirea ale carei victime au fost romani". Pirone a fost sub juramant la proces, iar "autorizatia legalizata la notariat de a reprezenta Ambasada Romaniei a fost depusa la tribunal cu cateva saptamani in urma".

- Scandal - Boieru' fara co
- Rechizitoriu - Seful AFA crima
- Cazul Tinu - Se cere relu

Toata arhiva - Observato

MANDAT. El a subliniat ca prezenta sa la proces s-a limitat la a da raspunsuri intrebarilor legate de caz, pe baza marturiilor anterioare ale acuzatilor, si a face plangerea oficiala, in conformitate cu le irakiana. De capul lui oare? Pirone sustine ca Munaf si cellalti patru condamnati la moa dreptul sa faca declaratii. Munaf ar fi dat o declaratie, reafirmand ca este nevinovat s anterioare i-au fost luate prin mijloace coercitive.

Potrivit lui Pirone, nici un alt membru al Fortei Multinationale nu a mai participat la p membri ai acesteia prezenti in sala erau observatori si gardieni. "Nu a fost prezent nici american si nici un general reprezentand o alta tara membra a coalitiei", spune Pirone care contrazice declaratii anterioare, chiar ale presedintelui Basescu: conform docum de judecatorul american, "ostaticii romani au fost eliberati in mai 2005 intr-un raid al sub comanda Fortei Multinationale". Presedintele Basescu afirma, la 22 mai, ca elibera operatiune executata 100% de serviciile de informatii ale statului roman".

DREPTURI. Din acelasi document, pus la dispozitia Jurnalului National de catre avocat lui Munaf, Jonathan Hafetz, aflam ca procedurile de transferare a detinutilor aflati in Multinationale si condamnati de o curte irakiana dureaza doua-trei saptamani. Un con moarte are dreptul la recurs automat la Curtea Irakiana de Casatie, avand la dispozitie pronuntarea sentintei pentru a inainta dosarul catre aceasta instanta.

JUSTITIA NEAGA ORICE IMPLICARE

Ministerul Justitiei sustine ca nu a avut cunostinta despre delegarea vreunui ofiter americar reprezinte statul roman in procesul lui Munaf. Seful Directiei Drept International si Tratate institutiei, Razvan Radu, ne-a declarat ca "Ministerul nu a imputernicit nici un ofiter americ Guvernul roman in proces". Potrivit acestuia, institutia la care lucreaza nu a stiut nimic des reprezentare. "Nici nu ar fi avut sens sa imputernicim pe cineva care sa reprezinte statul ro cat tara noastra si-a exercitat si isi exercita in continuare propria jurisdictie cu privire la ac Munaf. Inca de la inceput, urmarirea penala in cazul rapirii jurnalistilor romani s-a exercita Romania, rechizitoriul intocmit de procurorii romani impreuna cu dosarul au fost trimise sp instantei din tara. Atat autoritatile irakiene, cat si cele americane au fost notificate", ne-a Radu. Teoretic, atat Romania, cat si Irakul erau competente sa judece cazul: tara noastra, victimele au cetatenie romana, iar Irakul, pentru ca fapta s-a petrecut acolo. "Avem de-a fi de jurisdictie, dar niciodata autoritatile romane competente, instanta sau parchet, nu au c procedurilor judiciare catre cele irakiene", a declarat Razvan Radu.

- **Miruna Pasa**

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[Seal Omitted]
MINISTERUL JUSTIŢIEI

DEPARTAMENTUL DE PRESĂ COOPERARE CU ORGANIZAŢIILE NEGUVERNAMENALE

2 Noiembrie 2006

COMUNICAT

Ministrul justiţiei solicită din nou autorităţilor străine competente sprijinul pentru audierea lui Mohammad Munaf

Ministrul justiţiei, Monica Macovei, i-a transmis joi, 2 noiembrie 2006, o scrisoare procurorului general, şeful Departamentului de Justiţie al SUA, Alberto Gonzales, în care îi solicită sprijinul pentru ca Mohammad Munaf să fie audiat de instanţele româneşti, înainte de a fi transferat autorităţilor irakiene. Noua solicitare este motivată de faptul pe 27 octombrie 2006, Curtea de Apel a SUA a dispus ca Mohammad Munaf să nu fie transferat autorităţilor irakiene până pe 6 noiembrie 2006.

Ministrul justiţiei precizează în scrisoare că face acest demers întrucât aducerea lui Mohammad Munaf în faţa instanţelor româneşti este o prioritate a autorităţilor judiciare din România.

În acelaşi timp, ministrul justiţiei i-a adresat o scrisoare şi dlui. Hashim Abderrahman al-Shibli, ministrul justiţiei din Republica Irak, prin care îi solicită sprijinul pentru soluţionarea, de urgenţă, a ultimelor cereri de asistenţă prin care s-a solicitat audierea, sub forma unei comisii rogatorii clasice sau prin videoconferinţă, a cetăţeanului american şi irakian Mohammad Munaf. Începând cu luna decembrie 2005, Ministerul român al Jus-

tiţiei a transmis 5 cereri de asistenţă judiciară formulate în cauzele penale aflate pe rolul Curţii de Apel Bucureşti privindu-l pe Mohammad Munaf.

La solicitarea Ambasadei României la Washington, Ministerul Justiţiei a transmis totodată o Infogramă în care precizează că nu a împuternicit niciun oficial american să reprezinte statul român în cadrul procedurilor judiciare irakiene privindu-l pe Mohammad Munaf.

Autorităţile române nu au renunţat niciun moment la audierea lui Mohammad Munaf în cauzele privind răpirea, în anul 2005, a trei jurnalişti români. În acest sens, începând cu luna decembrie 2005, România a solicitat repetat asistenţa autorităţilor irakiene şi americane pentru soluţionarea cauzelor penale aflate pe rolul Curţii de Apel Bucureşti. Autorităţile române solicită audierea lui Mohammad Munaf în calitate de inculpat în dosarul nr. 6595/2/2006 al Curţii de Apel Bucureşti, Secţia I Penală şi în calitate de martor în dosarul nr. 33970/2/2005 al aceleiaşi instanţe.

DEPARTAMENTUL DE PRESĂ

[Seal] ROMANIA
Ministry of Justice

MINISTRY OF JUSTICE

"PRESS AND COOPERATION WITH OTHER NON-GUVERNMENTAL ORGANIZATION" DEPARTMENT

2 November 2006

PRESS RELEASE

Ministry of Justice Requests Again Support From Foreign Authorities In the Case of Mohamad Munaf Hearing

On Thu, 2nd of November 2006, Ms. Monica Macovei, the [Romanian] Minister of Justice, dispatched a letter to Mr. Alberto Gonzales, **General Prosecutor and Chief of the US Justice Department,** requesting his support to **have a hearing conducted by the Romanian Courts, in the case of Mohamad Munaf, before his transfer to the Iraqi authorities.**

The new request is based on the fact that on 27th of October 2006, the US Court of Appeal has issued a disposition according to which Mohamad Munaf should not be transferred to the Iraqi authorities before 6th of November 2006.

The Ministry of Justice stated in the letter that she takes this step because 'presenting the case (Mohamad Munaf's case) before the Romanian Courts is a priority of the Romanian judicial authorities'.

At the same time, the Ministry of Justice, addressed a letter, also to **Mr. Hashim Abderrahman al-Shibli, the Iraqi Minister of Justice,** requesting his support for **urgent resolution, of the last requests for assistance to have**

a hearing, in the form of a classic Rogatory Commission or a video-conference, in the case of Mohamad Munaf, who has dual US and Iraqi citizenship. Since December 2005, the Romanian Ministy of Justice has issued 5 **applications for judiciary assistance,** — formulated in penal cases under the docket of the Appeal Court in Bucharest — in the case of Mohamad Munaf.

At the request of the Romanian Embassy in Washington, the Ministry of Justice has also dispatched an info gram, which states that **the Embassy has not authorized any American official to represent the Romanian Government during the Iraqi judicial procedures, with respect to Mohamad Munaf.**

Romanian Authorities **never gave up the idea of a hearing in the case of Mohamad Munaf,** in the case of the three Romanian journalists kidnapping, in 2005. Thus, since December 2005, **Romania has repeatedly requested American and Iraqi Authorities' assistance, to resolve the penal cases found in the docket of the Appeal Court in Bucharest.** Romanian Authorities are requesting a hearing in the case of Mohamad Munaf, as 'the accused" in the case Nr. 6595/2/2006 (Appeal Court in Bucharest, Penal Department) and as "a witness" in the case Nr. 33970/2/2005 (case adjudicated by the same Court).

PRESS DEPARTMENT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 06-5126

SANDRA K. OMAR, ET AL., PETITIONERS-APPELLEES

v.

FRANCIS J. HARVEY, ET AL.,
RESPONDENTS-APPELLANTS

DOCKET ENTRIES

DATE	PROCEEDINGS
4/28/06	CIVIL-US CASE docketed. Notice of Appeal filed by Appellant Francis J. Harvey, Appellant William H. Brandenburg, Appellant Timothy Houser. [965577-1] (hts) [06-5126]
5/4/06	MOTION filed (5 copies) by Appellees Sandra K. Omar and Ahmed S. Omar (certificate of service by hand dated 5/4/06) to expedite case [966582-1]. Response due on 5/16/06. (mam) [06-5126]
5/4/06	ENTRY OF APPEARANCE filed by Attorney Susan L. Burke for Appellee Ahmed S. Omar, Appellee Sandra K. Omar [966587-1]. (mam) [06-5126]

DATE	PROCEEDINGS
5/4/06	INITIAL SUBMISSIONS filed by Appellees Sandra K. Omar and Ahmed S. Omar [966588-1]: 28(a)(1) certificate. (mam) [06-5126]
5/8/06	RESPONSE filed [967571-1] (5 copies) by Appellants Francis J. Harvey, William H. Brandenburg and Timothy Houser (certificate of service by mail dated 5/8/06) to a motion to expedite case [966582-1]. (mam) [06-5126]
5/8/06	ENTRY OF APPEARANCE filed by Attorney Douglas N. Letter for Appellant Timothy Houser, Appellant William H. Brandenburg, Appellant Francis J. Harvey [967574-1]. (mam) [06-5126]
5/10/06	PER CURIAM ORDER filed [967575] considering motion expedite case [966582-1] and establishing the initial briefing schedule [967575-1]: Appellant's brief and appendix due on 6/2/06; Appellee's brief due on 6/23/06; Appellant's reply brief due on 7/7/06. Clerk directed to schedule case for oral argument in September 2006. Before Judges Henderson, Garland, Brown. [Entry Date: 5/10/06] (mam) [06-5126]

DATE	PROCEEDINGS
6/2/06	BRIEF filed by Appellants Francis J. Harvey, William H. Brandenburg, Timothy Houser [974410-1]. Copies: 15. Certificate of service date 6/2/06, by hand-delivery and Federal Express. (lvs) [06-5126]
6/2/06	JOINT APPENDIX filed by Appellees Sandra K. Omar, Ahmed S. Omar, Appellants Francis J. Harvey, William H. Brandenburg, Timothy Houser [974414-1]. Copies: 10. (lvs) [06-5126]
6/16/06	NOTICE filed by Susan Burke, counsel for Appellees Sandra K. Omar, Appellee Ahmed S. Omar, informing the court of her change of address: Burke Pyle LLC, 4112 Station Street, Philadelphia, PA 19127, Phone: 215-487-6596, Fax: 215-482-0874 [982499-1]. Certificate of service date 6/13/06 by mail. (lvs) [06-5126]
6/19/06	CLERK'S ORDER filed [974840] to schedule oral argument [974840-1] before Judge Initials: DST JRB HTE on 9/11/06 at 9:30 AM. [Entry Date: 6/19/06] (cwc) [06-5126]
6/23/06	BRIEF filed by Appellees Sandra K. Omar and Ahmed S. Omar [978641-1]. Copies: 15. Certificate of personal service date 6/23/06. (krm) [06-5126]

DATE	PROCEEDINGS
6/28/06	MOTION filed (5 copies) by Appellants Francis J. Harvey, et al. (certificate of service dated 6/28/06) for a two-week extension of time to file reply brief. [978718-1] (lej) [06-5126]
7/11/06	PER CURIAM ORDER filed [979482] granting motion extend time [978718-1] The reply brief is now due 7/21/06. [Entry Date: 7/11/06] (lej) [06-5126]
7/21/06	REPLY BRIEF filed by Appellants Francis J. Harvey, William H. Brandenburg, and Timothy Houser [982406-1]. Copies: 15. Certificate of mail service date 7/21/06. (krm) [06-5126]
8/31/06	PER CURIAM ORDER filed [989228] to allocate oral argument times: APET minutes- 15 ERES minutes- 15. [989228-1], one counsel per side to argue. [989228-2] Oral argument scheduled for 9/11/06, Form 72 notice of attorney arguing case - [989228-3] due 9/5/06. [Entry Date: 8/31/06] (cwc) [06-5126]
9/1/06	FORM 72 submitted by Attorney Aziz Zahirul Huq on behalf of appellee Shawqi Omar [990547-1] [990547-2]. (set) [06-5126]

DATE	PROCEEDINGS
9/5/06	FORM 72 filed by Attorney Gregory George Garre on behalf of appellants Francis J. Harvey, Secretary of the Army, et al. [990485-1] [990485-2]. (set) [06-5126]
9/11/06	ORAL ARGUMENT HELD before Tatel, Brown, Edwards. (set) [06-5126]
10/16/06	FIRST CLASS MAIL [1003444-1] sent to Susan Burk [*sic*] RETURNED marked "unclaimed". Mail was a Per Curiam order establishing the initial briefing schedule [967575-1]. (mam) [06-5126]
10/16/06	FIRST CLASS MAIL [1003447-1] sent to Susan Burk [*sic*] RETURNED marked "unclaimed". Mail was a clerk order schedule oral argument [974840-1]. (mam) [06-5126]
10/16/06	FIRST CLASS MAIL [1003448-1] sent to Susan Burke RETURNED marked "unclaimed". Mail was an order granting appellants' motion to extend time to file reply brief. (mam) [06-5126]
10/20/06	LETTER filed by Appellant Francis J. Harvey, Appellant William H. Brandenburg, Appellant Timothy Houser pursuant to FRAP 28j advising of additional authorities [999292-1]. Certi-

DATE	PROCEEDINGS
	ficate of service date 10/20/06. (cwc) [06-5126]
10/20/06	MOTION (styled emergency motion for injunctive relief filed (5 copies) by appellants Munaf et al., in 06-5324, by their counsel, who is counsel for Appellee Sandra K. Omar et al. in this case (certificate of service by mail dated 10/20/06) for injunction pending appeal [999448-1]. Note: the moion contains a request that this motion be decided by panel who heard oral argument in 06-5126. (filed 10/20/06 in 06-5324, ID 999233) (mam) [06-5126]
10/23/06	PER CURIAM ORDER filed [999547] denying request to assn appeal to panel who heard oral argument in 06-5126 (Judge Tatel, Judge Brown and Judge Edwards) and referring consideration of motion injunction [999233-1] to a special panel. [Entry Date: 10/23/06] [06-5126, 06-5324] (mam) [06-5126 06-5324]
10/24/06	TRANSCRIPT of oral argument held on 9/11/06. [965562-1] (mam) [06-5126]

DATE	PROCEEDINGS
11/8/06	FIRST CLASS MAIL [1003449-1] RESENT to Ms. Burke: copies of 5/10/06 order, 6/19/06 order and 7/11/06 order sent to her for her records. (mam) [06-5126]
2/9/07	JUDGMENT that the decision of the district court is affirmed for the reasons in the accompanying opinion. Before Judges Tatel, Brown, Edwards. [Entry Date: 2/9/07] (mcm) [06-5126]
2/9/07	OPINION filed [1022184] (25 pgs) for the Court by Judge Tatel, DISSENTING OPINION (12 pgs) filed by Judge Brown (mcm) [06-5126]
2/9/07	CLERK'S ORDER filed [1022185] The Clerk is directed to withhold issuance of the mandate [1022185-1] pending disposition of any timely petition for rehearing. [Entry Date: 2/9/07] (mcm) [06-5126]
3/26/07	PETITION for rehearing [1031273-1] and PETITION, for rehearing en banc [1031273-2] (20 copies) filed by Appellant Francis J. Harvey (c/s dated 3/26/07) (mam) [06-5126]

DATE	PROCEEDINGS
4/4/07	CLERK'S ORDER filed [1032953], on the court's own motion, that within 15 days of the date of this order, appellees file a response to the petition, not to exceed 15 pages. the [*sic*] court will not accept a reply to the response. [Entry Date: 4/4/07] (mcm) [06-5126]
4/18/07	RESPONSE filed [1035660-1] (5 copies) by Appellees Sandra K. Omar and Ahmed S. Omar (certificate of service dated 4/18/07) to Appellants' Petition for Rehearing and Rehearing En Banc. (smc) [06-5126]
4/19/07	CORRECTED response to Appellants' Petition for Rehearing and Rehearing En Banc [1035805-1] (certificate of service dated 4/19/07) [1035660-1] filed by Appellees Sandra K. Omar and Ahmed S. Omar. (smc) [06-5126]
4/26/07	LETTER filed by Appellant Francis J. Harvey pursuant to FRAP 28j advising of additional authorities [1036894-1]. Certificate of service date 4/26/07. (mam) [06-5126]
5/24/07	PER CURIAM ORDER, In Banc, filed [1042558] denying suggestion rehearing en banc [1031273-2] filed by Francis Harvey. Before Judges Ginsburg,

DATE	PROCEEDINGS
	Sentelle, Henderson, Randolph, Rogers, Tatel, Garland, Brown,* Griffith, Kavanaugh.* [Entry Date: 5/24/07] (Circuit Judges Brown and Kavanaugh would grant the petition for rehearing en banc) (mcm) [06-5126]
5/24/07	PER CURIAM ORDER filed [1042559] denying petition rehearing [1031273-1] filed by Francis J. Harvey. (Mandate may issue on or after 6/1/07). Before Judges Tatel, Brown,* Edwards. [Entry Date: 5/24/07] (Circuit Judge Brown would grant the petition for rehearing) (mcm) [06-5126]
6/15/07	MANDATE ISSUED to Clerk, District Court [1047306-1] (mcm) [06-5126]
8/17/07	NOTICE filed by the Supreme Court. The application for an extension of time within which to file a petition for a writ of certiorari has been presented to The Chief Justice, who on 8/15/07 extended the time to and including 9/21/07 (appl no. 07A117) [1061412-1] (smc) [06-5126]
12/10/07	LETTER sent by the S. Ct. on 12/7/07 stating that they entered an order granting the petition for a writ of certiorari. The case is consolidated with 06-1666 and a total of one hour is allotted

DATE	PROCEEDINGS
	for oral argument. [1086023-1] (hts) [06-5126]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 1:05-cv-02374-RMU

SANDRA K. OMAR, ET AL., PETITIONERS

v.

FRANCIS J. HARVEY, ET AL., RESPONDENTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
12/12/2005	1	PETITION for Writ of Habeas Corpus (Filing fee $ 5.) filed by SANDRA K. OMAR, AHMED S. OMAR. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3-15 # 4 Exhibit List # 5 Text of Proposed Order # 6 Certificate of Service) (jf,) (Entered: 12/13/2005)
01/19/2006	2	ENTERED IN ERROR .....MOTION for Order to Show Cause by SANDRA K. OMAR, AHMED S. OMAR. (Attachments: # 1 Brief in Support of Motion # 2 Text

DATE	DOCKET NUMBER	PROCEEDINGS
		of Proposed Order # 3 Certificate of Service) (Burke, Susan) Modified on 1/19/2006 (tg,). (Entered: 01/19/2006)
01/19/2006	3	MOTION for Order to Show Cause by SANDRA K. OMAR, AHMED S. OMAR. (Attachments: # 1 Brief in Support of Motion # 2 Text of Proposed Order # 3 Certificate of Service) (Burke, Susan) (Entered: 01/19/2006)
01/19/2006		NOTICE OF CORRECTED DOCKET ENTRY: re 2 MOTION for Order to Show Cause was entered in error as the memorandum of points and authorities was filed instead of the motion. Counsel was instructed to refile said pleading. (tg,) (Entered: 01/19/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
01/20/2006	4	ORDER granting 3 Motion for Order to Show Cause. Signed by Judge Ricardo M. Urbina on 1/20/06. (md) (Entered: 01/20/2006)
01/24/2006	5	Unopposed MOTION for Extension of Time to *Show Cause Why Writ Should Not Be Granted* by FRANCIS J. HARVEY, WILLIAM H. BRANDENBURG, TIMOTHY HOUSER. (Attachments: # 1 Text of Proposed Order) (White, Edward) (Entered: 01/24/2006)
01/25/2006		MINUTE ORDER granting 5 Consent Motion for Extension of Time. The respondents shall respond to the show cause order on or before February 9, 2006. Signed by Judge Ricardo M. Urbina on 1/25/06. (md) (Entered: 01/25/2006)
01/25/2006		Set Deadlines/Hearings: Respondent's Response to Show Cause due by 2/9/2006. (jwd) (Entered: 01/25/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
02/03/2006	9	ORDER Granting Ex Parte Motion for Temporary Restraining Order. It is hereby ORDERED that the petitioner's motion for a temporary restraining order is GRANTED. It is FURTHER ORDERED that the petitioner shall not be removed from United States custody, and it is ORDERED that the temporary restraining order expires on Monday, February 13, 2006, and it is FURTHER ORDERED that the petitioners shall submit supplemental briefing on or before Monday, February 6, 2006 at 9 a.m., and it is ORDERED that the respondents shall submit an opposition to the petitioner's motion on or before Tuesday, February 7, 2006 at 5 p.m., and it is FURTHER ORDERED that the petitioner shall submit a reply to the government's opposition on or before Wednesday, February 8, 2006 at

DATE	DOCKET NUMBER	PROCEEDINGS
		3 p.m. Signed by Judge Ricardo M. Urbina on 2/3/06. (md) (Entered: 02/03/2006)
02/03/2006		MINUTE ORDER: The petitioners shall file the original ex parte motion for a temporary restraining order electronically. Signed by Judge Ricardo M. Urbina on 2/3/06. (md) (Entered: 02/03/2006)
02/03/2006	7	MOTION for Temporary Restraining Order by SANDRA K. OMAR, AHMED S. OMAR. (Attachments: # 1 Exhibit A # 2 Exhibit 1# 3 Exhibit 2 # 4 Exhibit B) (tg,) (Entered: 02/03/2006)
02/03/2006	8	Emergency MOTION for Temporary Restraining Order by SANDRA K. OMAR, AHMED S. OMAR. (Burke, Susan) (Entered: 02/03/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
02/03/2006		Set Deadlines/Hearings: Petitioners supplemental briefing due by 2/6/2006 at 9:00 a.m. Respondents Opposition due by 2/7/2006 at 5:00 p.m. Petitioners Reply to Government's Opposition due by 2/8/2006 at 3:00 p.m. (jwd) (Entered: 02/03/2006)
02/06/2006	10	SUPPLEMENTAL MEMORANDUM to re 8 Emergency MOTION for Temporary Restraining Order filed by SANDRA K. OMAR, AHMED S. OMAR. (Attachments: # 1 Exhibit A # 2 Exhibit B-E) (Burke, Susan) (Entered: 02/06/2006)
02/06/2006	11	MEMORANDUM OPINION. Signed by Judge Ricardo M. Urbina on 2/6/06. (md) (Entered: 02/06/2006)
02/07/2006	12	RESPONSE TO ORDER OF THE COURT re 9 Order,,, *Respondents' Opposition to Petitioners' Ex Parte Motion for a Temporary Restraining Order* filed by FRANCIS J. HARVEY,

DATE	DOCKET NUMBER	PROCEEDINGS
		WILLIAM H. BRANDENBURG, TIMOTHY HOUSER. (Attachments: # 1 Exhibit 1# 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5) (White, Edward) (Entered: 02/07/2006)
02/07/2006	13	MOTION for Leave to Appear Pro Hac Vice: Attorney Name- Heather L. Allred.: Address- Burke Pyle LLC, 3527 Lancaster Avenue, Philadelphia, PA 19104. Phone No. - (215) 387-4705. Fax No. - (215) 387-4713 by SANDRA K. OMAR, AHMED S. OMAR. (Attachments: # 1 Exhibit Declaration of Heather L. Allred # 2 Text of Proposed Order) (Burke, Susan) (Entered: 02/07/2006)
02/07/2006	14	MOTION for Leave to Appear Pro Hac Vice: Attorney Name- Aziz Z. Huq.: Address- Brennan Center for Justice at NYU School of Law, 12th Floor, 161 Avenue of the Americas, New York,

DATE	DOCKET NUMBER	PROCEEDINGS
		NY 10013. Phone No. - (212) 992-8632. Fax No. - (212) 995-4550 by SANDRA K. OMAR, AHMED S. OMAR. (Attachments: # 1 Exhibit Declaration of Aziz Z. Huq # 2 Text of Proposed Order) (Burke, Susan) (Entered: 02/07/2006
02/07/2006	15	MOTION for Leave to Appear Pro Hac Vice: Attorney Name- Jonathan Hafetz.: Address- Brennan Center for Justice at NYU School of Law, 12th Floor, 161 Avenue of the Americas, New York, NY 10013. Phone No. - (212) 998-6730. Fax No. - (212) 995-4500 by SANDRA K. OMAR, AHMED S. OMAR. (Attachments: # 1 Exhibit Declaration of Jonathan Hafetz # 2 Text of Proposed Order) (Burke, Susan) (Entered: 02/07/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
02/08/2006		MINUTE ORDER granting 13 14 15 motions for leave to appear pro hac vice. Heather H. Allred, Aziz Z. Huq and Jonathan Hafetz are hereby granted leave to appear pro hac vice. Signed by Judge Ricardo M. Urbina on 2/8/06. (Entered: 02/08/2006)
02/08/2006	16	MOTION for Leave to Appear Pro Hac Vice: Attorney Name- Joseph Margulies.: Address- MacArthur Justice Center, University of Chicago Law School, 1111 East 60th Street, Chicago, IL 60637. Phone No. - (773) 702-9560. Fax No. - (773) 702-0771 by SANDRA K. OMAR, AHMED S. OMAR. (Attachments: # 1 Exhibit Declaration of Joseph Margulies # 2 Text of Proposed Order) (Burke, Susan) (Entered: 02/08/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
02/08/2006	17	ENTERED IN ERROR..... REPLY to opposition to motion re 8 Emergency MOTION for Temporary Restraining Order filed by SANDRA K. OMAR, AHMED S. OMAR. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Burke, Susan) Modified on 2/8/2006 (tg,). (Entered: 02/08/2006)
02/08/2006		NOTICE OF CORRECTED DOCKET ENTRY: re 17 Reply to opposition to Motion was entered in error at counsel's request due to typographical errors. Counsel will refile said pleading. (tg,) (Entered: 02/08/2006)
02/08/2006	18	REPLY to opposition to motion re 8 Emergency MOTION for Temporary Restraining Order filed by SANDRA K. OMAR, AHMED S. OMAR. (Attachments: # 1 Exhibit 1# 2 Exhibit 2) (Burke, Susan) (Entered: 02/08/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
02/09/2006		MINUTE ORDER granting 16 Motion for Leave to Appear Pro Hac Vice. Joseph Margulies is hereby granted leave to appear pro hac vice. Signed by Judge Ricardo M. Urbina on 2/9/06. (Entered: 02/09/2006)
02/09/2006	19	AFFIDAVIT re 10 Supplemental Memorandum *Signed Declaration of Hania Mufti* by SANDRA K. OMAR, AHMED S. OMAR. (Attachments: # 1 Affidavit) (Burke, Susan) (Entered: 02/09/2006)
02/09/2006	20	RESPONSE TO ORDER OF THE COURT re Order on Motion for Extension of Time to, 4 Order on Motion for Order to Show Cause *Respondents' Response to Order to Show Cause Supporting Dismissal of the Petition for Habeas Corpus* filed by FRANCIS J. HARVEY, WILLIAM H. BRANDENBURG, TIMOTHY HOU-

DATE	DOCKET NUMBER	PROCEEDINGS
		SER. (White, Edward) (Entered: 02/09/2006)
02/13/2006	21	ORDER Granting the Petitioner's Motion for a TRO/ Preliminary Injunction. Signed by Judge Ricardo M. Urbina on 2/13/06. (Entered: 02/13/2006)
02/13/2006	22	MEMORANDUM OPINION. Signed by Judge Ricardo M. Urbina on 2/13/06. (Entered: 02/13/2006)
02/16/2006	23	REPLY to opposition to motion re 3 MOTION for Order to Show Cause *Memorandum and Proposed Order Concerning Conference and Discovery Order* filed by SANDRA K. OMAR, AHMED S. OMAR. (Attachments: # 1 Text of Proposed Order) (Burke, Susan) (Entered: 02/16/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
03/02/2006	24	RESPONSE to 23 *Petitioners' Memorandum and Proposed Order Concerning Conference and Discovery Order* filed by FRANCIS J. HARVEY, WILLIAM H. BRANDENBURG, TIMOTHY HOUSER. (White, Edward) Modified on 3/3/2006 (nmw,). (Entered: 03/02/2006
03/09/2006	25	REPLY re 24 *to Response to Memorandum Concerning Conference and Discovery Order* filed by SANDRA K. OMAR, AHMED S. OMAR. (Attachments: # 1 Text of Proposed Order) (Burke, Susan) Modified on 3/10/2006 (nmw,). (Entered: 03/09/2006)
03/29/2006	26	SUPPLEMENTAL MEMORANDUM to re 25 Reply to Document *Request for Ruling on Conceded Motion for Access to Counsel* filed by SANDRA K. OMAR,

DATE	DOCKET NUMBER	PROCEEDINGS
		AHMED S. OMAR. (Burke, Susan) (Entered: 03/29/2006)
03/30/2006	27	RESPONSE to 26 *Petitioners' Request for Ruling* filed by FRANCIS J. HARVEY, WILLIAM H. BRANDENBURG, TIMOTHY HOUSER. (White, Edward) Modified on 3/31/2006 (nmw,). (Entered: 03/30/ 2006)
04/14/2006	28	NOTICE OF APPEAL as to 21 Order entered on 02/13/06 by FRANCIS J. HARVEY, WILLIAM H. BRANDENBURG, TIMOTHY HOUSER. No fee/U.S. Government. (jf,) (Entered: 04/17/ 2006)
04/14/2006		Supplemental Record on Appeal transmitted to US Court of Appeals re 28 Notice of Appeal (jf,) (Entered: 04/17/ 2006)

DATE	DOCKET NUMBER	PROCEEDINGS
04/21/2006	29	Emergency MOTION Renewed Request for Access and Motion for Records by SANDRA K. OMAR, AHMED S. OMAR. (Attachments: # 1 Text of Proposed Order # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C # 5 Exhibit D # 6 Exhibit E # 7 Exhibit F) (Burke, Susan) (Entered: 04/21/2006)
05/05/2006	30	Memorandum in opposition to re 29 Emergency MOTION Renewed Request for Access and Motion for Records filed by FRANCIS J. HARVEY, WILLIAM H. BRANDENBURG, TIMOTHY HOUSER. (Attachments: # 1 Exhibit A # 2 Exhibit B) (White, Edward) (Entered: 05/05/2006)
05/17/2006	31	REPLY to opposition to motion re 29 Emergency MOTION Renewed Request for Access and Motion for Records filed by SANDRA K. OMAR, AHMED S. OMAR. (Attachments: # 1 Text of

DATE	DOCKET NUMBER	PROCEEDINGS
		Proposed Order) (Burke, Susan) (Entered: 05/17/2006)
05/17/2006		USCA Case Number 06-5126 for 28 Notice of Appeal filed by FRANCIS J. HARVEY, WILLIAM H. BRANDENBURG, TIMOTHY HOUSER. (jf,) (Entered: 05/18/2006)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. [Omitted]

SANDRA K. OMAR, [**REDACTED**]

ADHMED S. OMAR, [**REDACTED**] AS NEXT FRIENDS OF SHAWQI AHMAD OMAR, CAMP BUCCA, IRAQ;
PETITIONERS

v.

FRANCIS J. HARVEY, SECRETARY OF THE UNITED STATES ARMY, 101 ARMY PENTAGON, ROOM 3E-506, WASHINGTON, D.C. 20301-0101;

MAJOR GENERAL WILLIAM H. BRANDENBURG, DEPUTY COMMANDING GENERAL (DETAINEE OPERATIONS)/COMMANDING GENERAL, TASK FORCE 134, MULTI-NATIONAL FORCE-IRAQ; LIEUTENANT COLONEL TIMOTHY HOUSER, 105TH MILITARY POLICE BATTALION, CAMP BUCCA, IRAQ 09375;
RESPONDENTS

PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTORY STATEMENT

1. Petitioners Sandra K. Omar ("Sandra") and Ahmed S. Omar ("Ahmed") seek a writ of habeas corpus on behalf of and as next friends of Shawqi Ahmad Omar ("Shawqi" or "Mr. Omar"). Sandra is Shawqi's wife and Ahmed is Shawqi's adult son.

They are among Mr. Omar's closest living relatives.

2. Mr. Omar is a United States citizen who has been illegally imprisoned by the United States military in Iraq for more than one year. He has been detained virtually *incommunicado*, without notice, without access to counsel, without charge, without warrant, and without even elementary due process. He has repeatedly asserted his innocence and requested legal counsel. Because these requests have been unavailing, his wife and son, both United States citizens, petition this Court for a writ of habeas corpus on Mr. Omar's behalf.

3. On information and belief, Mr. Omar was living in Baghdad, Iraq with his ten-year-old-son when he was arrested at his home on October 29, 2004. After more than twelve months of detention, Mr. Omar continues to be held in United States detention at Camp Bucca, in southern Iraq. Mr. Omar's family members have not received any information from his captors about the duration or legal basis for his detention, despite their repeated requests.

4. The United States Constitution, the laws of the United States, and the binding obligations of international law all prohibit the United States from arresting its citizens and denying them access to counsel and to any legal process by which they may challenge the basis of their detention. Mr. Omar's continued detention, now more than one year's duration, violates numerous constitutional, statutory, and international law provisions, including:

a) The fundamental right to due process of law guaranteed by the Fifth Amendment of the United States Constitution;

b) The fundamental right to be released absent a criminal proceeding or judicial process under the Suspension Clause of the United States Constitution, Article I, § 9, cl. 2;

c) The fundamental right to assistance of counsel protected by the Fifth and Sixth Amendments;

d) The right to be free from arbitrary and indefinite executive detention pursuant to the Citizen Non-Detention Act, 18 U.S.C. § 4001(a); and

e) The right to be free from arbitrary and indefinite detention as guaranteed under, *inter alia*, the International Convention on Civil and Political Rights and customary international law, including the customary international law of armed conflict.

5. Accordingly, Petitioners Sandra and Ahmed Omar respectfully seek relief from this Court in the form of a writ of habeas corpus. Petitioners specifically request that this Court issue such a writ compelling Respondents to give Mr. Omar access to counsel, and either to release Mr. Omar or to provide a lawful basis for his continued detention.

II. JURISDICTION AND VENUE

6. Petitioners invoke this Court's jurisdiction pursuant to 28 U.S.C. §§ 2241(a), (c)(1) & (c)(3); 2242 and 2243. In addition, this Court has jurisdiction under

the United States Constitution, Article I, § 9, cl. 2 (the Suspension Clause), Article III, and the Due Process Clause of the Fifth Amendment because those provisions entitle Petitioners to a judicial forum in which to contest the legal validity of Mr. Omar's detention. Petitioners further invoke this Court's jurisdiction under 28 U.S.C. §§ 1331, 1350, 1651 (the All Writs Act), §§ 2201 & 2202 (the Declaratory Judgment Act).

6. Mr. Omar is legally entitled to challenge his detention. The United States Supreme Court recently held that federal habeas corpus jurisdiction "requires nothing more" than a claim that a petitioner is "being held in federal custody in violation of the laws of the United States" once personal jurisdiction over a custodian is established. *Rasul* v. *Bush*, 543 U.S. 466, ___, 124 S. Ct. 2688, 2698 (2004).

7. Camp Bucca is within the plenary and exclusive "jurisdiction or dominion exercised in fact" of the United States, such that this Court has jurisdiction over a claim brought by an American citizen imprisoned there. *Id.* at 2697.

8. This Court has personal jurisdiction over Respondents because they are officers or agents of the United States carrying out their responsibilities in the District of Columbia, having substantial contacts in the District, and being physically located within this Court's territorial jurisdiction.

9. Venue is proper in the District of Columbia for this writ of habeas corpus because one or more of the Respondents resides within the jurisdiction of this

Court and is amendable to service of process in the district. 28 U.S.C. §§ 1391(a), (b) & (e).

III. PARTIES

10. Petitioner Sandra K. Omar ("Sandra") is Shawqi Omar's wife and an American citizen who currently resides in Amman, Jordan. Her declaration is attached as Exhibit 1. Sandra has repeatedly sought information about and access to her husband since his arrest. *Exhibit 1 (Sandra Omar Decl.) at ¶¶ 11-15; 21-23; 25; 29.* United States military authorities have failed to provide Sandra with any reason for Mr. Omar's continued detention. Because Mr. Omar has been denied access to legal counsel and to the courts of the United States, Sandra acts as his next friend. *See id. at ¶¶ 19; 26-28.*

11. Petitioner Ahmed Omar ("Ahmed") is Mr. Omar's eldest son, and an American-born United States citizen who resides in North Carolina. His declaration is attached as Exhibit 2. Ahmed has been deeply concerned about his father's health and safety since the beginning of Mr. Omar's detention, and has been one of a handful of close relations who has received correspondence from Mr. Omar, and who has attempted to correspond with Mr. Omar. *See Exhibits 6-9; 15 (correspondence from Shawqi Omar to Ahmed Omar).* Because Mr. Omar has been denied access to counsel and to the courts of the United States, Ahmed acts as his next friend.

12. Petitioner Shawqi Omar is a naturalized citizen of the United States of America. His United States Passport number is **[REDACTED]**. *See Exhibit 3 (copy of passport).* His naturalization number is

[REDACTED]. *See Exhibit 4 (copy of naturalization certificate).* He is incarcerated in United States military custody at Camp Bucca Theater Internment Facility in the vicinity of Umm Qasr, in southern Iraq. On information and belief, his detainee number at Camp Buccas is 200165. *See Exhibit 1 (Sandra Omar Decl.) at ¶ 16.* Mr. Omar has requested that his captors provide him with counsel, but to date has been denied access to counsel, despite having invoked his right to counsel several times in letters to his family. *See infra at ¶ 29 (describing Mr. Omar's repeated attempts to obtain counsel).*

13. Petitioners Ahmed and Sandra Omar are dedicated to representing the interests of Shawqi Omar, with whom they share a close, familial relationship. By contrast, Mr. Omar cannot review, sign, or approve this Petition or appear in his own behalf because he remains in almost *incommunicado* confinement at Camp Bucca, Iraq. Moreover, Mr. Omar lacks access to an attorney or to United States courts, despite his repeated requests for counsel. Denied all access to the United States Consular Service and provided only intermittent contact with representatives of the International Committee of the Red Cross ("ICRC"), Mr. Omar's sole contact with the outside world is via sporadic telephone calls (six over the course of a year) and heavily censored hand-written correspondence to his family in communications that are restricted by the military authorities to "family news only." In short, Mr. Omar is completely incapable of acting on his own behalf. Accordingly, Ahmed and Sandra Omar, his son and wife respectively, file suit on his behalf.

14. Respondent Francis J. Harvey is the Secretary of the United States Army. Respondent Harvey is the senior official of the Department of the Army and is responsible for all matters related to the United States Army. Respondent Harvey has authority over the custody and control of United States Armed Forces detainee operations in Iraq, including those held at Camp Bucca and the custodian responsible for Mr. Omar's detention. He is sued in his official capacity.

15. Respondent Major General William H. Brandenburg is Deputy Commanding General of Detainee Operations and Commanding General of Task Force 134, Multi-National Force-Iraq. Respondent Brandenburg has responsibility for detainee operations for United States Armed Forces in Iraq. Respondent Brandenburg is charged with maintaining custody and control over all of the approximately 11,000 prisoners of the United States Army in Iraq, including those at Camp Bucca. He is sued in his official capacity.

16. Respondent Lieutenant Colonel Timothy Houser is with the 105th Military Police Battalion and is the commanding officer at Camp Bucca, Iraq. Respondent Houser is Shawqi's immediate custodian at Camp Bucca.

IV. STATEMENT OF FACTS

A. Background to Mr. Omar's Arrest

17. Shawqi Omar is an American citizen. Born to Jordanian parents in Kuwait on December 17, 1961, Mr. Omar came to the United States on a student visa in 1979 at age seventeen. *See Exhibit 1 (San-*

dra Omar Decl.) at ¶ 4. In 1983, he married a United States citizen, Sandra Kay Sulzle (now Sandra Omar), in Mobridge, South Dakota. *See id. at ¶ 3.* With his new wife, Mr. Omar moved to Minnesota, where he served in the Minnesota National Guard. *Id.* He became a United States citizen on November 17, 1986. See Exhibit 4. He and Sandra have six children together, all of whom are United States citizens. *See Exhibit 1 (Sandra Omar Decl.) at ¶ 7.*

18. At some point following the removal of the Saddam Hussein dictatorship, Mr. Omar traveled to Iraq with his ten-year-old son, Salahedin, seeking contract work in the reconstruction of that country. *See Exhibit 1 (Sandra Omar Decl.) at ¶ 9.* On information and belief, he intended to return to the United Arab Emirates, where Petitioner Sandra Omar was living at the time, in time for the Eid holiday in November 2004.

B. Mr. Omar's Arrest and Detention

19. United States soldiers arrested Mr. Omar in front of his ten-year-old son at his Baghdad residence on October 29, 2004. *See Exhibit 1 (Sandra Omar Decl.) at ¶ 11.* Mr. Omar was beaten by soldiers in front of family members during the course of the arrest. *Id.*

20. Since October 29, 2004, Mr. Omar has been held by United States Armed Forces in Iraq, while his family has received no formal notification of the grounds for his detention. *See Exhibit 2 (Ahmed Omar Decl.) at ¶ 8.* Mr. Omar was initially held at Camp Cropper, which is close to Baghdad Interna-

tional Airport, and is currently being held at Camp Bucca, near Umm Qasr. *See Exhibit 1 (Sandra Omar Decl.) at ¶ 16; Exhibit 5 (May 19, 2005 letter from Amman ICRC).*

C. Petitioner's Attempts To Contact Mr. Omar

21. On or about November 10, 2004, Sandra Omar learned from family that her husband had been arrested. *See Exhibit 1 (Sandra Omar Decl.) at ¶ 11.* At that time, Sandra was also advised that the same United States forces had confiscated her son Salahedin's United States passport. After much difficulty, the ICRC was able to secure Shawqi's signature on the form needed to retrieve Salahedin's passport. Sandra received the passport in May 2005, over six months after it had been confiscated. *Id.* at ¶ *22.*

22. Sandra contacted the American Embassy in Baghdad, Iraq, seeking information about her husband's whereabouts and the reasons for his detention. *See Exhibit 1 (Sandra Omar Decl.) at ¶ 11.* On December 22, 2004, Marie Damour, United States Consul in Baghdad, informed Sandra that Mr. Omar was being held "under United States military care, custody, and control," and that he had recently been seen by the ICRC. *See id. at ¶ 13.*

23. Sandra Omar communicated with Ms. Damour several times (via electronic mail and telephone) between December 6, 2004 and April 4, 2005. On February 16, 2005, almost four months after Shawqi Omar was first arrested and imprisoned by United States Armed Forces in Iraq, Ms. Damour informed Sandra that the United States military

had denied the United States Consular Service's request to meet with Shawqi. *See Exhibit 1 (Sandra Omar Decl.) at ¶ 15.*

24. On January 12, 2005, Ms. Damour informed Sandra Omar by email that she had received verbal agreement from the detaining authority to visit Mr. Omar. *See Exhibit 1 (Sandra Omar Decl.) at ¶ 14.* Three months later, however, Ms. Damour was still in the process of trying to secure permission from the United States military to see Mr. Omar. On April 4, 2005, she emailed Sandra and stated that the United States Armed Forces had denied the United States Consul visitation permission. Describing her efforts, Ms. Damour stated that she was "afraid that we have been stymied at every turn." *Id. at ¶ 15.*

25. On October 27, 2005, Mr. Omar was transferred temporarily to Abu Ghraib prison near Baghdad, where he was visited by United States consular personnel. He was not given access to a lawyer at this time. His family was not informed in advance of the visit. *See Exhibit 1 (Sandra Omar Decl.) at ¶ 24.*

26. Mr. Omar has been permitted to correspond with his family only via handwritten letters and via six brief telephone calls to his wife Sandra and other family members. Written correspondence is transmitted through the ICRC. Many of Shawqi Omar's letters to his relatives, which the military authorities limit to "family news only," contain redacted or blacked-out text. *See, e.g., Exhibit 6 (April 29, 2005 letter from Shawqi Omar to Ahmed Omar.)*

27. Mr. Omar has been subjected to days of interrogation without a lawyer present against his express requests. Mr. Omar stated that he had "requested [a lawyer] the first min[ute] [he] was arrested." *Exhibit 7 (March 18, 2005 letter from Shawqi Omar to Ahmed Omar).* In a March 11, 2005 letter, Mr. Omar has stated that he has been questioned "for 8 days with no lawyer" even though "I asked them to get me a lawyer over here." *Exhibit 8 (March 11, 2005 letter from Shawqi Omar to Ahmed Omar).*

28. Not all the correspondence from Mr. Omar's family reaches him in Camp Cropper and Camp Bucca. In a February 11, 2005 letter addressed to Ahmed, Mr. Omar asserted that he had not received any letters from family members. *See Exhibit 9 (February 11, 2005 letter from Shawqi Omar to Ahmed Omar).* On May 20, 2005, Shawqi indicated that he had only received eleven letters from his family during the previous seven months. *See Exhibit 10 (May 20, 2005 letter from Shawqi Omar to Sandra Omar).*

D. Requests for Counsel and Assertions of Innocence

29. Mr. Omar has requested counsel on at least seven occasions, as evidenced by correspondence with his family. *See Exhibit 13 (March 18, 2005, letter from Shawqi Omar to Sandra Omar) (stating that "my only Demand is to see a Lawyer" and that Mr. Omar had been requesting a lawyer "for the last 5 months, But nothing"); id. ("[M]y only Demand is to see a Lawyer"); see also Exhibit 7 (March 18, 2005 letter from Shawqi Omar to Ahmed Omar) ("I have to have a lawyer ASAP.") Exhibit 8 (March*

11, 2005 letter from Shawqi Omar to Ahmed Omar) ("You need to find a lawyer to take my case in the States"); Exhibit 9 (February 11, 2005 letter from Shawqi Omar to Ahmed Omar) (requesting Ahmed to find "any one willing to be my lawyer in here"); Exhibit 6 (April 29, 2005 letter from Shawqi Omar to Ahmed Omar) (asking Ahmed "to sue everyone and contact every newspaper"); Exhibit 11 (May 6, 2005, letter from Shawqi Omar to Sandra Omar) (noting that he "didn't see any lawyer"); Exhibit 12 (April 22, 2005, letter from Shawqi Omar to Sandra Omar) ("I need a lawyer for my case in the USA, I have not seen any lawyer").

30. Mr. Omar expressed the gravity of his request for counsel in the form of a hunger strike, telling his captors that he would not eat until he got a lawyer. He wrote to Ahmed that he would take "No food, water, Medicine, until I see a lawyer." *Exhibit 7 (March 18, 2005 letter from Shawqi Omar to Ahmed Omar).*

31. Mr. Omar also continually asserted that he is innocent of wrongdoing. In a May 20, 2005 letter to his wife, for example, he emphatically insisted that "I did not do anything wrong." *Exhibit 10 (transcript of May 20, 2005, letter from Shawqi Omar to Sandra Omar).*

E. Conditions of Mr. Omar's Confinement

32. Mr. Omar has only sporadic visits from the ICRC, which monitors detention conditions and prisoners' well-being in Iraq. In a letter dated February 11, 2005, Mr. Omar indicated he had had no contact with the ICRC for more than two months. *See Ex-*

hibit 9 (February 11, 2005 letter from Shawqi Omar to Ahmed Omar).

33. Give the intermittent and fragmentary communications from Mr. Omar, Petitioners Sandra and Ahmed are deeply concerned about Mr. Omar's physical and psychological well being after more than twelve months of detention by the United States military in Iraq. *See Exhibit 1 (Sandra Omar Decl.) at ¶ 29; Exhibit 2 (Ahmed Omar Decl.) at ¶ 10.*

34. Mr. Omar has explained that he had been on a hunger strike taking only liquids: "[O]n the 17th off [sic] March 2005, I started a full strike where I will not take anything. No food, No liquid, No medicine, No IV." *Exhibit 13 (March 18, 2005, letter from Shawqi Omar to Sandra Omar).* The same day, Mr. Omar wrote to his son that he would remain on a "full strike[.] No food, water, Medicine, until I see a lawyer." *Exhibit 7 (March 18, 2005 letter from Shawqi Omar to Ahmed Omar).*

35. Mr. Omar has been held in solitary confinement, his health is deteriorating, and he has lost a substantial amount of weight. *See, e.g., Exhibit 14 (July 22, 2005 letter from Shawqi Omar to Sandra Omar) (Mr. Omar is in solitary confinement); Exhibit 8 (March 11, 2005 letter from Shawqi Omar to Ahmed Omar); Exhibit 9 (February 11, 2005 letter from Shawqi Omar to Ahmed Omar); Exhibit 15, (January 6, 2005 letter from Shawqi Omar to Ahmed Omar). In a further letter dated July 22, 2005, Shawqi wrote that he is "in solitary in Bucca [and] my health is not good . . . ." Exhibit 14 (true transcript of July 22, 2005 letter*

from Shawqi Omar to Sandra Omar). Four months earlier, he had stated that he had "already lost 60 lbs." Exhibit 7 (March 18, 2005 letter from Shawqi Omar to Ahmed Omar); see also Exhibit 11 (May 6, 2005, letter from Shauqi Omar to Sandra Omar) (noting that Mr. Omar had lost 35 lbs.).

F. Fear of Unlawful Transfer

36. Petitioners Sandra and Ahmed have reason to believe that the United States military may turn Mr. Omar over to the custody of Iraqi authorities in an effort to evade the strictures of United States law. On or about June 22, 2005, Mr. Omar was allowed a brief opportunity to speak by telephone with his wife. During that conversation, Mr. Omar told her that he had been told that he may be transferred to the custody of Iraqi authorities. *See Exhibit 1 (Sandra Omar Decl.) at ¶¶ 17, 18.*

37. On November 1, 2005, Petitioner Sandra was informed by email by the United States Consul that "under Iraqi law, [Mr. Omar] has a right to legal counsel should he appear before an investigating judge on criminal charges." Petitioner Sandra believes this refers to a potential transfer to Iraqi custody. *See Exhibit 1 (Sandra Omar Decl.) at ¶ 25.*

38. Petitioners Sandra and Ahmed, who are Shawqi's closest family members, know Mr. Omar wishes them to proceed via a habeas corpus petition to secure his release.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
UNLAWFUL DETENTION UNDER THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

39. Petitioners reallege and incorporate by reference each and every allegation contained in the proceeding paragraphs as if set forth fully herein.

40. Respondents' arrest and arbitrary, indefinite detention without process of Mr. Omar violates the "most elementary of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, ____, 124 S. Ct. 2633, 2646 (2004) (O'Connor, J., plurality op.). The United States Constitution affords Shawqi Omar, as a United States citizen, its full protection.

41. The United States' detention of Mr. Omar is arbitrary and unlawful in at least two respects. First, Mr. Omar has not been afforded access to counsel or any adequate procedure or an opportunity to be heard or notice to permit him to show his innocence of any and all wrongdoing. The Due Process Clause of the Fifth Amendment to the Constitution guarantees Mr. Omar the right to adequate notice of the basis for his detention and a meaningful opportunity to be heard to challenge his detention. Because Mr. Omar has been denied notice and any opportunity to be heard, his detention violates procedural due process.

42. Second, the United States has not charged Mr. Omar with a crime or otherwise articulated the grounds for Mr. Omar's detention. The unjustified detention of a person without a trial is a violation of substantive Due Process rights.

SECOND CLAIM FOR RELIEF
UNLAWFUL DETENTION UNDER THE SUSPENSION CLAUSE

43. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

44. Respondents' arrest and continued detention of Mr. Omar violates the United States Constitution, Habeas Corpus Suspension Clause, Article I, § 9, cl. 2, because the Suspension Clause guarantees Mr. Omar the right to be charged criminally or released. Mr. Omar has been and continues to be detained without charge.

45. Respondents' arrest and continued detention of Mr. Omar violates the Habeas Corpus Suspension Clause, Art. I, § 9, cl. 2, because the Suspension Clause guarantees Mr. Omar the right to an adequate and meaningful judicial process. Mr. Omar has been and continues to be detained without such a process.

THIRD CLAIM FOR RELIEF
UNLAWFUL DETENTION CONTRARY TO THE CITIZEN NON-DETENTION ACT

46. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

47. Respondents' arrest and detention of Mr. Omar violates the Citizen Non-Detention Act, 18 U.S.C. § 4001(a). The Act commands that: "No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress." No Act of Congress authorizes the continued detention of Mr. Omar, and therefore his continued detention violates the Citizen Non-Detention Act.

FOURTH CLAIM FOR RELIEF
UNLAWFUL DETENTION CONTRARY TO ARMY REGULATIONS

48. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

49. Respondents' arrest and detention of Mr. Omar violates Army Regulation 190-8, which prohibits the prolonged detention of civilians. *See* Army Reg. 190-8 at 1-6(g) ("Persons who have been determined by a competent tribunal not to be entitled to prisoner of war status may not be executed, imprisoned, or otherwise penalized without further proceedings to determine what acts they have committed and what penalty should be imposed.")

FIFTH CLAIM FOR RELIEF
PROLONGED ARBITRARY DETENTION IN VIOLATION OF INTERNATIONAL LAW

50. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

51. Respondents have breached, and continue to breach their obligations under customary international law, accepted by and binding on the United States, by seizing and continuing to hold Mr. Omar, a United States citizen, without justification, charge, or judicial proceeding. International law, including the International Covenant on Civil and Political Rights and the customary international law of armed conflict, prohibits prolonged arbitrary detention.

SIXTH CLAIM FOR RELIEF
DENIAL OF ACCESS TO COUNSEL UNDER THE FIFTH AMENDMENT

52. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

53. Respondents have denied Mr. Omar any access to counsel, despite his repeated requests. This violates the Fifth Amendment to the Constitution of the United States, which prohibits the government from denying individuals in its custody access to counsel when they request it.

SEVENTH CLAIM FOR RELIEF
DENIAL OF ACCESS TO COUNSEL UNDER THE SIXTH AMENDMENT

54. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

55. Respondents have denied Mr. Omar any access to counsel, despite his repeated requests. Their conduct violates the Sixth Amendment to the Constitution, which grants Mr. Omar the right to be informed of the nature and cause of the accusation against him and to be provided the assistance of counsel in his defense.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

(a) Grant Petitioners Ahmed Omar and Sandra Omar "Next Friend" status for Shawqi Omar, the real party in interest in this Petition;

(b) Order Respondents to ensure that Real Party Shawqi Omar receives a copy of this Petition, and any Order this Court may issue;

(c) Order Respondents to allow counsel to meet and confer with Mr. Omar, in private and unmonitored attorney-client conversations, both by phone and in person;

(d) Order Respondents to cease all interrogations of Mr. Omar, whether direct or indirect;

(e) Enjoin Respondents from transferring Mr. Omar to the authority of any other government, sovereign, country, or agency until this Court has an opportunity to consider and decide the merits of this Petition;

(f) Issue a Writ of Habeas Corpus requiring Respondents to release Shawqi Omar from detention, and/or requiring Respondents to bring Shawqi Ahmad Omar before a court of competent jurisdiction in the United States to show just cause for his continued detention;

(g) Convene an evidentiary hearing and order Respondents to produce Shawqi for the hearing, either by video or in person; and

(h) Order such other relief as the Court may deem necessary and appropriate to protect Mr. Omar's rights, and his rights.

Dated: December 2, 2005

Respectfully submitted,

/s/ SUSAN L. BURKE

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 05-2374 (RMU)

SANDRA K. OMAR, ET AL., PETITIONERS

v.

FRANCIS J. HARVEY, ET AL., RESPONDENTS

[Filed: Feb. 3, 2006]

ORDER

Granting The *Ex Parte* Motion for a Temporary Restraining Order

Late in the evening on Thursday, February 2, 2006 the petitioner[1] filed an *ex parte* motion for a temporary restraining order. Upon consideration of the arguments in the motion and for reasons to be set forth more fully in a memorandum opinion to follow, the court grants the petitioner's motion for a temporary restraining order.

This order is entered without prior notice to the government because the *ex parte* motion raises obvious and substantial issues regarding the threat of irreparable harm to an American citizen. First, the petitioner alleges that he faces the possibility of transfer to the

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[1] Technically, there are three petitioners in this case, two of whom are next friends of Shawqi Ahmad Omar. Because Shawqi Ahmad Omar is the only petitioner allegedly subject to transfer to the Iraqi authorities, all references are to one petitioner.

control of a country where he may be subjected to torture or indefinitely confinement; and second, this court recognizes that the petitioner faces the threat of irreparable harm based on the potential elimination of his habeas claims. Pursuant to *CSX Transport, Inc. v. Williams*, the court concludes that, for purposes of a temporary restraining order, petitioner has made an adequate showing. *CSX Transp., Inc. v. Williams*, 406 F.3d 667 (D.C. Cir. 2005) (citing *CityFed Fin. Corp.*, 58 F.3d at 747) (stating that the four factors for a injunctive relief should be balanced on a sliding scale, and that a party can compensate for a lesser showing on one factor by making a very strong showing on another factor).

Affording the parties adequate time to address these and other operative issues more fully, the court elects to maintain the status quo during the pendency of the temporary restraining order now set in place for the next ten days.[2]

Accordingly, it is this 3rd day of February, 2006,

ORDERED that the motion for a temporary restraining order is **GRANTED**, and it is

FURTHER ORDERED that the petitioner shall not be removed from United States custody, and it is

ORDERED that the temporary restraining order expires on Monday, February 13, 2006, and it is

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[2] Because the court recognizes the tension created by the constitutional implications arising out of judicial versus executive branch authority on the matter, the court directs counsel to address this issue head on and through referenced authority in their submissions.

FURTHER ORDERED that the petitioners shall submit supplemental briefing on or before Monday, February 6, 2006 at 9 a.m., and it is

ORDERED that the respondents shall submit an opposition to the petitioner's motion on or before Tuesday, February 7, 2006 at 5 p.m., and it is

FURTHER ORDERED that the petitioner shall submit a reply to the government's opposition on or before Wednesday, February 8, 2006 at 3 p.m.

SO ORDERED.

RICARDO M. URBINA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 05-2374 (RMU)

SANDRA K. OMAR, ET AL., PETITIONERS

v.

FRANCIS J. HARVEY, ET AL., RESPONDENTS

[Filed: Feb. 5, 2006]

DECLARATION OF SUSAN L. BURKE

I declare under penalty of perjury that the following is true and correct:

1. My name is Susan L. Burke. I have been a member of the bar of the District of Columbia since 1987. I practiced with Covington & Burling for fourteen years. I also served as a Trial Attorney in Civil Frauds, Department of Justice. I now have my own firm, Burke Pyle LLC, which, along with the McArthur Justice Center at University of Chicago Law Center and the Brennan Center for Justice at the New York University School of Law, is attorney of record in this matter.

2. On December 12, 2005, counsel filed a petition for habeas corpus on behalf of Shawki [*sic*] Omar. *See* Docket No. 1.

3. At all times relevant to this matter, Mr. Omar has been held in the custody of the United States government (hereinafter "U.S. government").

4. Prior to engaging us as counsel, Mr. Omar's American wife, Sandra Omar, had been taking steps to learn the whereabouts of her husband. Ms. Omar communicated frequently with the International Committee of the Red Cross (hereinafter "ICRC") as well as with various branches of the U.S. government. Based on the information Ms. Omar learned from the ICRC and U.S. government sources, the U.S. government appears to have moved Mr. Omar back and forth between different prisons for purposes of convenience to the U.S. government. Some of this information has been previously provided in the Petition, but is repeated for clarity of the narrative.

5. On or about October 29, 2004, the U.S. government arrested Mr. Omar in his Baghdad residence. U.S. soldiers beat Mr. Omar during the arrest. Mr. Omar's ten-year-old son, Salahedin, also an American citizen, was in a nearby room within hearing distance of his father's beating. U.S. soldiers then confiscated the ten-year-old's passport and arrested Mr. Omar without apprising him of why they were doing so. To date, Mr. Omar still has not been told why he was arrested and why he has been imprisoned for more than fifteen months without charge or access to counsel.

6. On or about December 22, 2004, the U.S. government (via Marie Damour, then United States Consul in Baghdad) finally responded to Ms. Omar's entreaties for information about the whereabouts of her husband. She was informed only that Mr. Omar was imprisoned "under United States military care, custody and control."

7. The U.S. government initially imprisoned Mr. Omar at Camp Cropper, which is near the Baghdad International Airport. By the time the U.S. government responded to Ms. Omar's pleas, the U.S. government had moved Mr. Omar to Camp Bucca, which is near the port city of Umm Qasr, and approximately an eight-hour drive from Baghdad, where Mr. Omar was arrested.

8. On or about October 27, 2005, the U.S. government moved Mr. Omar to Abu Ghraib prison for a consular visit.

9. On or about October 31, 2005, after learning of the possibility of this visit from the ICRC, Ms. Omar wrote to the United States Consul in Baghdad asking them to confirm that her husband had received a consular visit at the U.S. prison at Abu Ghraib.

10. On or about November 2, 2005, Nermeen Omar (who resides in Baghdad) tried to see Mr. Omar at Abu Ghraib, but the U.S. government refused to permit her to see him. U.S. prison officials said that Mr. Omar's number was listed but that he was not allowed visits. They advised Nermeen Omar to return after Monday, November 7, 2005.

11. On or about November 7, 2005, Nermeen Omar went back to Abu Ghraib to visit Mr. Omar but the U.S. government prison officials told her that they had already transferred him back to Camp Bucca, which is an eight hours' drive away. The U.S. government prison officials let Nermeen Omar make an appointment to see him at Bucca on December 10, 2005.

12. On or about December 10, 2005, Nermeen Omar drove eight hours to visit Mr. Omar at Camp Bucca. The U.S. government prison officials acknowledged that Mr. Omar was imprisoned at Camp Bucca but denied Nermeen Omar the right to visit him, claiming some problem with her identification.

13. On or about December 12, 2005, we filed the Petition on Mr. Omar's behalf. We served a copy of the Petition on the U.S. government by registered mail, return receipt requested.

14. On December 19, 2005, the U.S. government received and signed for a copy of the Petition. A true and correct copy of the signed return receipt is attached hereto as Exhibit 1.

15. We provided a copy of the Petition to Ms. Omar, who also provided a copy to the ICRC representative.

16. On or about January 19, 2006, we filed a Motion for Order To Show Cause with the Court. We served a copy of that Motion on the U.S. government.

17. On or about January 23, 2006, the ICRC visited Mr. Omar. The ICRC showed the U.S. govern-

ment officials as well as Mr. Omar a copy of the Petition. The U.S. government prison officials did not permit Mr. Omar, a United States citizen, to keep a copy of the Petition filed on his behalf.

18. On or about January 24, 2006, I was contacted by Edward H. White, Department of Justice. Mr. White explained that he had not seen the habeas petition until he received our motion for order to show cause on or about January 19, 2006, due to an internal file processing error. *See also Respondents' Motion for Extension of Time to Show Cause Why Writ Should Not be Granted, at 1, n.2 (filed Jan. 24, 2006).* We agreed to consent to an extension of time for the U.S. government to respond.

19. At the same time, on or about January 24, 2006, the U.S. government was moving Mr. Omar from the Camp Bucca prison to Abu Ghraib prison.

20. On or about January 27, 2006, I learned via electronic communications from Ms. Omar that the ICRC had been told by U.S. government officials that they transferred Mr. Omar to Abu Ghraib for some type of court proceeding that had been scheduled for February 3, 2006.

21. On or about January 30, 2006, Nermeen Omar was able to visit Mr. Omar at the Abu Ghraib prison.

22. On or about January 30, 2006, we contacted various departments of the U.S. government, including the Department of Justice, the United

States Ambassador to Iraq, and the Consul in Baghdad, to remind them that we are entitled as counsel to attend and participate in any legal proceeding and that we needed to be included to represent Mr. Omar's interests. Participating in a proceeding held at Abu Ghraib appears to be possible because there are functional videolink facilities. We also offered to have a legal representative present in person. True and correct copies of the letters transmitted to the U.S. government are attached hereto as Exhibit 2.

23. On or about February 2, 2006, the U.S. government informed us that it intended to turn Mr. Omar over to the Iraqi criminal authorities for a proceeding and that it intended to do so without giving us any notice. An email from Department of Justice attorney Edward H. White, stated that:

> Mr. Omar is currently in the custody of Multinational Force-Iraq, and a determination was previously made to refer his case to the Central Criminal Court of Iraq (CCCI). We are informed that no hearing in his case is scheduled for Friday, February 3, 2006. We understand that when Mr. Omar appears for any hearing in the CCCI, he is afforded counsel (either retained by him/his family, or appointed by the Court). If Mr. Omar decides to use retained local counsel rather than Court-appointed counsel, we are informed that he/his family can provide to the CCCI the contact information for his retained local counsel before the hearing begins and that Court personnel will notify the retained local

counsel at that time. Please be advised that, whenever scheduled, we would not be able to disclose to you the date of any hearing for security reasons (including the safety of Mr. Omar.).

A true and correct copy of this email is attached hereto as Exhibit 3.

24. On or about February 2, 2006, I responded to Mr. White around 3:30 pm by stating in an email: "This is not acceptable. Please call to discuss."

25. The evening of February 2, 2006, at approximately 6:49 pm, the U.S. government (via Ned White, Department of Justice) responded as follows: "Susan: *I thought that the information I provided was more than sufficient to address the concerns you had expressed.* If you have any specific information that makes you believe that my response is 'not acceptable' then please provide that to me." (Emphasis added.) A true and correct copy of this email is attached as Exhibit 4.

26. On or about February 2, 2006, we filed at approximately 10:30 pm an *Ex Parte* Emergency Motion for a Temporary Restraining Order seeking to prevent the U.S. government officials from turning Mr. Omar over the Iraqi criminal authorities. We have reasonable grounds to believe that Mr. Omar would be tortured if he is turned over to the Iraqi criminal authorities.

27. On or about February 3, 2006, during the pendency of this emergency motion, the U.S. gov-

ernment moved Mr. Omar from Abu Ghraib prison to the Camp Cropper prison. We learned this when Nermeen Omar went to Abu Ghraib prison to make another appointment to see Mr. Omar. The U.S. government prison officials told her they had moved him to Camp Cropper, and she could not see him.

28. Based on the U.S. government's conduct and responses to date, we have a good faith belief that the U.S. government intends summarily and without notice to counsel or the Court to turn Mr. Omar over to the physical and/or legal custody of Iraqi criminal authorities.

Date: February 5, 2006 /s/ SUSAN L. BURKE
SUSAN L. BURKE

BEST AVAILABLE COPY

[EXHIBIT 1]

EXHIBIT 1 1:05-CV-02374-RMU

SENDER: COMPLETE THIS SECTION

[illegible]

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

KENNETH L WAINSTEIN
UNITED STATES ATTORNEY
DISTRICT OF COLOMBIA
DISTRICT
JUDICIARY CENTER
555 4TH ST N.W.
WASHINGTON DC 20530

COMPLETE THIS SECTION ON DELIVERY

A. Signature X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) DEC 1 9 '00

C. Date of Deliver

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type
☐ Certified Mail ☐ Express Mail
☒ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) RA 000 682 1 36805

PS Form 3811, August 2001 Domestic Return Receipt

[EXHIBIT 2]

Burke Pyle LLC

3527 lancaster avenue philadelphia, pa 19104
tel: 215.387.4705 fax: 215.387.4713

January 31, 2006

By facsimile, email and regular mail

Edward H. White, Esq.
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W., Room 6110
Washington, D.C. 20530

Re: Omar v. Harvey, 05-2374

Dear Ned:

As you know, we represent Petitioner Shawqi Omar in the above action challenging his prolonged military detention in Iraq. We have just learned that Mr. Omar is scheduled for some kind of proceeding at the Abu Ghraib prison in Iraq on February 3, 2006—after more than one year of captivity and less than a week before the Government's response to Mr. Omar's habeas petition is due. We write to demand that we be permitted to attend and to participate in this proceeding, and that we be provided with a writing that sets forth any charges against Mr. Omar. Our representative in Baghdad will be able to attend the proceeding.

It is vital that Mr. Omar be present and be accorded a full opportunity to participate meaningfully in any hearing held to determine the lawfulness of his detention. To that end, he must have the opportunity to be heard, to confront fully any evidence against him, to call witnesses, and to the assistance of counsel. It is also essential that any decision be made in writing, and that copies are provided promptly to Mr. Omar and undersigned counsel. As we indicated in the habeas petition, we do not believe that any proceeding short of an Article III criminal proceeding justifies continued detention.

Please notify us immediately with details of who should be contacted to arrange for our attendance at the February 3, 2006, proceeding.

Sincerely,

/s/ SUSAN L. BURKE
SUSAN L. BURKE

Burke Pyle LLC

3527 lancaster avenue philadelphia, pa 19104
tel: 215.387.4705 fax: 215.387.4713

February 1, 2006

By facsimile, email and regular mail

Dr. Zalmay Khalilzad, Ambassador
Embassy of the United States
APO AE 09316
Baghdad, Iraq

Re: U.S. Prisoner Shawqi Ahmad Omar,
Detainee No. 200165
Omar v. Harvey, 05-2374

Dear Ambassador Khalilzad:

I am part of a legal team representing Mr. Shawqi Omar, a United States citizen who has been imprisoned by United States military forces in Iraq since October 29, 2004. After being retained by Mr. Omar's wife and oldest son, we filed a petition for writ of habeas corpus on Mr. Omar's behalf in the United States District Court for the District of Columbia on December 12, 2005, asking for his immediate release. That Court has ordered the United States to explain why the petition should not be granted. The United States' response is due on February 9, 2006.

Yesterday, we learned that Mr. Omar will be subject to an unknown type of hearing at Abu Ghraib on Friday,

February 3, 2006. Mr. Omar has been imprisoned without charge for over a year, but we understand that he may have recently been or may very soon be formally charged. We have not yet received any copy of any charges against him.

We are asking for your immediate assistance in securing the right to counsel for this American citizen at what appears to be a crucial proceeding. We understand Abu Ghraib has videolink facilities, so it should not be a problem for us to participate in the proceeding from the United States. In addition, we would like to send our full-time employee in Baghdad to Abu Ghraib to be physically present during the proceeding to provide additional support for Mr. Omar. Although he is not an attorney, he is our agent and representative and is best able to further our representation of Mr. Omar.

We very much appreciate any assistance you are able to provide. If you learn any information, please contact me at the above numbers or at sburke@burkepyle.com.

Sincerely,

/s/ SUSAN L. BURKE
SUSAN L. BURKE

cc via email: Edward H. White, Esq., U.S. Department of Justice
Greg Mueller, International Committee of the Red Cross

Burke Pyle LLC

3527 lancaster avenue philadelphia, pa 19104
tel: 215.387.4705 fax: 215.387.4713

February 1, 2006

By facsimile, email and regular mail

Richard C. Hermann, U.S. Consul General
Embassy of the United States
APO AE 09316
Baghdad, Iraq

Re: U.S. Prisoner Shawqi Ahmad Omar, Detainee No. 200165
Omar v. Harvey, 05-2374

Dear Mr. Hermann:

I am part of a legal team representing Mr. Shawqi Omar, a United States citizen who has been imprisoned by United States military forces in Iraq since October 29, 2004. After being retained by Mr. Omar's wife and oldest son, we filed a petition for writ of habeas corpus on Mr. Omar's behalf in the United States District Court for the District of Columbia on December 12, 2005, asking for his immediate release. That Court has ordered the United States to explain why the petition should not be granted. The United States' response is due on February 9, 2006.

Yesterday, we learned that Mr. Omar will be subject to an unknown type of hearing at Abu Ghraib on Friday, February 3, 2006. Mr. Omar has been imprisoned without charge for over a year, but we understand that he may have recently been or very soon about to be for-

mally charged. We have not yet received any copy of any charges against him.

We are asking for your immediate assistance in securing protection of the right to counsel for this American citizen at what appears to be a crucial proceeding. We understand Abu Ghraib has videolink facilities, so it should not be a problem for us to participate in the proceeding from the United States. In addition, we would like to send our full-time employee in Baghdad to Abu Ghraib to be physically present during the proceeding to provide additional support for Mr. Omar. Although he is not an attorney, he is our agent and representative and is best able to further our representation of Mr. Omar.

We very much appreciate any assistance you are able to provide. If you learn any information, please contact me at the above numbers or at sburke@burkepyle.com.

Sincerely,

/s/ SUSAN L. BURKE
SUSAN L. BURKE

cc via email: Edward H. White, Esq., U.S. Department of Justice
Greg Mueller, International Committee of the Red Cross

[EXHIBIT 3]

Heather Allred

From: Ned.White@usdoj.gov
Sent: Thursday, February 02, 2006 9:28 AM
To: sburke@burkepyle.com (Receipt Notification Requested) (IPM Return Requested); hallred@burkepyle.com (Receipt Notification Requested) (IPM Return Requested)
Subject: RE: Omar v. Harvey

Susan,

I write in response to your letter dated January 31, 2006 and our subsequent email communications with respect to this matter. Mr. Omar is currently in the custody of Multinational Force-Iraq, and a determination was previously made to refer his case to the Central Criminal Court of Iraq (CCCI). We are informed that no hearing in his case is scheduled for Friday, February 3, 2006. We understand that when Mr. Omar appears for any hearing in the CCCI, he is afforded counsel (either retained by him/his family, or appointed by the Court). If Mr. Omar decides to use retained local counsel rather than Court-appointed counsel, we are informed that he/his family can provide to the CCCI the contact information for his retained local counsel before the hearing begins and that Court personnel will notify the retained local counsel at that time. Please be advised that, whenever scheduled, we would not be able to disclose to you the date of any hearing for security reasons (including the safety of Mr. Omar). I trust that this information satisfactorily resolves the concerns that prompted your inquiry.

Best regards,

Ned White
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, D.C. 20530
Tel: (202) 514-5108
Fax: (202) 318-4268

-------Original Message------

From: hallred@burkeplye.com [mailto: hallred@burkepyle.com]
Sent: Wednesday, February 01, 2006 6:29 PM
To: usconsulbaghdad@state.gov
Cc: White, Ned (CIV); iraq.iqs@icrc.org; sburke@burkepyle.com
Subject: U.S. Citizen detained at Abu Ghraib
Importance: High

Please see attached urgent letter to Ambassador Khalilzad.

Heather L. Allred

Burke Pyle LLC

3527 Lancaster Avenue

Philadelphia, PA 19104

215.382.2383

267.679.2674 (cell)

215.387.4713 (fax)

hallred@burkepyle.com

This message may contain privileged and confidential information. If you are not the intended recipient, please alert me and delete the message.

Thank you.

[EXHIBIT 4]

Heather Allred

From: Heather Allred [hallred@burkepyle.com]
Sent: Friday, February 03, 2006 3:49 PM
To: 'Aziz Huq'; jmarguli@uchicago.edu'; (hafetz@juris.law.nyu.edu)
Cc: 'sburke@burkepyle.com'
Subject: FW: Omar v. Harvey

------Original Message------
From: Ned.White@usdoj.gov [mailto:Ned.White@usdoj.gov)
Sent: Thursdy, February 02, 2006 6:49 PM
To: sburke@burkepyle.com (Receipt Notification Requested) (1 PM Returned Requested)
Subject: RE: Omar v. Harvey

Susan: I thought that the information I provided was more than sufficient to address the concerns you had expressed. If you have any specific information that makes you believe that my response is "not acceptable" then please provide that to me.

------Original Message------
From: sburke@burkepyle.com [mailto:sburke@burkepyle.com]
Sent: Thursday, February 02, 2006 3:31 PM
To: White, Ned (CIV)
Subject: RE: Omar v. Harvey

This is not acceptable. Please call me to discuss.

Susan L. Burke
Burke Pyle LLC
3527 Lancaster Avenue
Philadelphia, PA 19104
215.387.4709
215.971.5058 (cell)
215.387.4713 (fax)

This message may contain privileged and confidential information. If you are not the intended recipient, please alert me and delete the message.

Thank you.

------Original Message------
From: Ned.White@usdoj.gov [mailto:Ned.White@usdoj.gov]
Sent: Thursday, February 02, 2006 9:28 AM
To: hallred@burkepyle.com (Receipt Notification Requested) (IPM Return Requested); sburke@burkepyle.com (Receipt Notification Requested) (IPM Return Requested)
Subject: RE: Omar v. Harvey

Susan,

I write in response to your letter dated January 31, 2006 and our subsequent email communications with respect to this matter. Mr. Omar is currently in the custody of Multinational Force-Iraq, and a determination was previously made to refer his case to the Central Criminal Court of Iraq (CCCI). We are informed that no hearing in his case is scheduled for Friday, February

3, 2006. We understand that when Mr. Omar appears for any hearing in the CCCI, he is afforded counsel (either retained by him/his family, or appointed by the Court). If Mr. Omar decides to use retained local counsel rather than Court-appointed counsel, we are informed that he/his family can provide to the CCCI the contact information for his retained local counsel before the hearing begins and that Court personnel will notify the retained local counsel at that time. Please be advised that, whenever scheduled, we would not be able to disclose to you the date of any hearing for security reasons (including the safety of Mr. Omar). I trust that this information satisfactorily resolves the concerns that prompted your inquiry.

Best regards,

Ned White
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, D.C. 20530
Tel: (202) 514-5108
Fax: (202) 318-4268

------Original Message------
From: hallred@burkepyle.com [mailto:hallred@burkepyle.com]
Sent: Wednesday, February 01, 2006 6:29 PM
To: usconsulbaghdad@state.gov
Cc: White, Ned (CIV); iraq.iqs@icrc.org; sburke@burkepyle.com
Subject: U.S. Citizen detained at Abu Ghraib
Importance: High

Please see attached urgent letter to Ambassador Khalilzad.

Heather L. Allred

Burke Pyle LLC

3527 Lancaster Avenue

Philadelphia, PA 19104

215.382.2383

267.678.2674 (cell)

215.387.4713 (fax)

hallred@burkepyle.com

This message may contain privileged and confidential information. If you are not the intended recipient, please alert me and delete the message.

Thank you.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 05-2374 (RMU)

SANDRA K. OMAR, ET AL., PETITIONERS

v.

FRANCIS J. HARVEY, ET AL., RESPONDENTS

DECLARATION OF CURT GOERING
[Feb. 5, 2006]

I declare under penalty of perjury that the following is true and correct:

1. My name is Curt Goering. I am the Deputy Executive of Amnesty International, USA. Amnesty International is regarded as the leading human rights watchdog organization. Amnesty International received the Nobel Peace Prize in 1977. Amnesty's work is considered by experts around the globe to be authoritative and reliable.

2. I have served as Deputy Director for the past 20 years. In that position, I am personally responsible for overseeing and supervising teams of researchers who observe and monitor adherence to the rule of law on human rights norms. In addition, I have been a researcher in the Middle East Department at Amnesty International's headquarters in London and have traveled to

Iraq to investigate allegations of torture and abuse and interview survivors of torture.

3. At present, Iraqi government forces do not adhere to the rule of law. Instead, they regularly and systematically engage in acts of torture.

4. According to Amnesty International's research, the acts that have been perpetrated by Iraqi government forces include use of electric shocks on different parts of the body, strangulation, breaking of limbs, sexual abuse, using cigarettes to burn body parts, use of electric drills on arms and legs, and suffocation.

5. The Iraqi government forces have not established a functioning judicial system. The United Nations mission in Iraq recently called for the release of hundreds of individuals in prison, who were being kept imprisoned despite judicial order for their release.

6. There is evidence that the Iraqi criminal courts proceedings for those charged with "terrorist activities" include the introduction of evidence (such as confessions) that has been procured by torture and abuse.

7. At present, the Iraqi criminal courts proceedings fall far short of international standards for fair trials.

8. We understand that the United States government is contemplating turning United States citizen Shawki Omar over to the Iraqi criminal authorities. Based on Amnesty International's extensive research and investigations, we conclude that Shawki Omar would be at grave and

serious risk of being tortured if he were turned over to the Iraqi criminal authorities.

9. Based on Amnesty International's extensive research and investigation, we conclude that Shawki Omar is not likely to receive a trial in conformity with international standards for fair trials if he were to be tried by the Iraqi criminal authorities.

Date: [5 February 2006] /s/ CURT GOERING
CURT GOERING

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 05-2374 (RMU)

SANDRA K. OMAR, ET AL., PETITIONERS

v.

FRANCIS J. HARVEY, ET AL., RESPONDENTS

DECLARATION OF HANIA MUFTI
[Feb. 2, 2006]

I declare under penalty of perjury that the following is true and correct:

1. My name is Hania Mufti. I am employed by Human Rights Watch as a researcher. I am an expert in human rights in Iraq because I have been following and observing Iraqi governmental conduct for many years.

2. I have first-hand knowledge of the present state of affairs in Iraq. I travel to Iraq on a regular basis to observe whether the Iraqi governmental authorities adhere to the rule of law. The information I gather is provided to my employer, Human Rights Watch, which publicizes the state of affairs in Human Rights Watch statements and publications. The information contained in the Iraq chapter of the Human Rights Watch 2006 World Report remains valid to date.

3. In the course of my research I have learned that certain Iraqi governmental authorities and their agents torture and otherwise mistreat persons in their custody and control.

Date: _____ _____

Hania Mufti

Counsel for petitioners have been in contact with Ms. Mufti via email. Ms. Mufti is in Jordan and therefore unable to physically deliver the signed original to counsel for petitioners in time for the filing deadline. Counsel for petitioners will file the original available as soon as it is received from Ms. Mufti.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No.: 05-2374 (RMU)

Document No.: 7

SANDRA K. OMAR, ET AL., PETITIONERS

v.

FRANCIS J. HARVEY, ET AL., RESPONDENTS

[Filed: Feb. 6, 2006]

MEMORANDUM OPINION

GRANTING THE PETITIONER'S[1] MOTION FOR AN *EX PARTE* TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

The petitioner brings suit against the defendants, seeking release from the custody of the U.S. military in Iraq. This matter is before the court on the petitioner's motion for an *ex parte* temporary restraining order to enjoin the respondents from transferring him to the custody of the Iraqi authorities. Because the petitioner has shown the likelihood that he will suffer irreparable harm if he is transferred to the custody of a foreign gov-

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[1] There are three petitioners in this case, two of whom are next friends of Shawqi Ahmad Omar. Because Shawqi Ahmad Omar is the only petitioner allegedly subject to transfer to the Iraqi authorities, all references are to one petitioner.

ernment, the court grants the petitioner's motion for an *ex parte* temporary restraining order.

II. BACKGROUND

The petitioner is an American citizen held by the U.S. military in Iraq since October 29, 2004. Pet. for Writ of Habeas Corpus ("Pet.") ¶ 2. On January 20, 2006, the government moved the petitioner from Camp Bucca to Abu Ghraib. Pet'r's Mot. for a TRO ("Pet'r's Mot."). On February 2, 2006, the petitioner's attorneys received an e-mail from the respondents stating that the petitioner was "currently in the custody of [the] Multinational Force-Iraq, and a determination was previously made to refer his case to the Central Criminal Court of Iraq." Pet'r's Mot., Ex. 2. Fearing the consequences of transferring the petitioner to the custody of Iraqi authorities, the petitioner's attorneys filed a motion for an *ex parte* temporary restraining order late in the evening of February 2, 2006. The court now turns to that motion.

III. ANALYSIS

A. Legal Standard for an *Ex Parte* Temporary Restraining Order

Under Federal Rule of Civil Procedure 65(b), a party may apply to the court for a temporary restraining order without written or oral notice to the adverse party only if (1) it clearly appears from specific facts shown by affidavit or by verified complaint that immediate and irreparable injury will result to the applicant before the adverse party can be heard in opposition, and (2) the applicant's attorney certifies to the court the efforts made to give notice and the reasons why notice should not be required. FED. R. CIV. P. 65(b); *Haldane v.*

Crockford, 1998 WL 419617, at *1 (D.D.C. Apr. 23, 1998) (noting Rule 65's immediate and irreparable harm requirement for *ex parte* motions).

As the Supreme Court has noted, Rule 65's stringent restrictions "reflect the fact that our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been granted both sides of a dispute." *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 438-39 (1974). For that reason, *ex parte* temporary restraining orders "should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer. *Granny Goose Foods*, 415 U.S. at 439.

To gain *ex parte* relief, a plaintiff must show that such relief is appropriate under the circumstances. *First Tech. Safety Sys., Inc. v. Depinet*, 11 F.3d 641, 650 (6th Cir. 1993). Toward that end, the plaintiff may show that notice is impossible because the defendant is unknown or unable to be found. *Id.* (citing *Am. Can Co. v. Mansukhani*, 742 F.2d 314, 322 (7th Cir. 1984)). Alternatively, the plaintiff may demonstrate that notice to the defendant would render fruitless further prosecution of the action. *Id.* (citing *In re Vuitton et Fils S.A.*, 606 F.2d 1, 4 (2d Cir. 1979). Specifically, the plaintiff must show that "the adverse party has a history of disposing of evidence or violating court orders or that persons similar to the adverse party have such a history." *Id.* at 651.

B. The Petitioner Has Demonstrated Irreparable Harm

In the instant case, the petitioner presents facts that convince this court that irreparable injury will likely

result before the respondents can be heard in opposition to the motion. First, the petitioner faces the possibility of transfer to a government "where he might be tortured or indefinitely confined, which undeniably would constitute irreparable harm." *Al-Marri v. Bush*, 2005 WL 774843, at *4 (D.D.C. Apr. 4, 2005) (unpublished opinion). Specifically, the petitioner is a Sunni Muslim, and Iraqi authorities have, according to the allegations in the motion, condoned the torture of Sunni prisoners and used their police powers to settle sectarian scores. Pet'r's Mot. at 9. Second, the petitioner will suffer irreparable harm if his current habeas claim is eliminated or mooted by the respondent's actions. *Al-Marri*, at *4; *See also Abu Ali v. Ashcroft*, 350 F. Supp. 2d 28, 55 (D.D.C. 2004) (noting, in a case where an American citizen was held by the Saudi Arabian government allegedly at the behest of the United States, that the allegation that the citizen is deprived of an opportunity to vindicate his rights "is an exceptional situation that demands particular attention to the rights of the citizen"). The danger that the respondents could "obviate" the petitioner's right to "'test the legitimacy of his executive detention' . . . would certainly constitute a threat of irreparable harm." *Al-Marri*, at *5 (quoting *Lee v. Reno*, 15 F. Supp. 2d 26, 32 (D.D.C. 1998)) (internal citations omitted).

In addition to showing that he may suffer irreparable harm, the petitioner also requests to proceed *ex parte* because he is concerned that the respondents "may accelerate the [transfer] process" before responding to the motion. Pet'r's Mot. at 1. Because the defendant has adequately shown that immediate and irreparable injury will result from the respondents' actions and because the petitioner has certified the reasons why

he could not give notice to the respondents, the court holds that the petitioner has met the requirements for an *ex parte* restraining order.[2]

IV. CONCLUSION

For the foregoing reasons, the court granted the petitioner's motion for an *ex parte* temporary restraining order. An order consistent with this Memorandum Opinion was issued the 3rd day of February, 2006.

RICARDO M. URBINA
United States District Judge

---

[2] The court is mindful of the tension created by the constitutional implications of this case, and will address these concerns following full briefing by the parties. Order Granting Pet'r's Mot. for *Ex Parte* TRO (Feb. 3, 2006).